

CONSOLIDATED SUMMARY JUDGMENT EXHIBITS

EXHIBIT 10

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 -----X
PAUL IACOVACCI,

4
PLAINTIFF,

5
6 -against-

Case No.:

1:18-cv-08048

7
8 BREVET HOLDINGS, LLC, et al.,

9 DEFENDANTS.

-----X

10
11 DATE: October 5, 2021

12 TIME: 9:00 A.M.

13
14
15 VIDEOTAPED VIRTUAL DEPOSITION of
16 the Defendant, BREVET HOLDINGS, LLC, et
17 al., by a 30(b)(6) Witness, MARK CALLAHAN,
18 taken by the Plaintiff, pursuant to a Court
19 Order and to the Federal Rules of Civil
20 Procedure, held remotely, at all parties'
21 locations, before KARYN CHIUSANO, a Notary
22 Public of the State of New York.
23
24
25

A P P E A R A N C E S:

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BY: LOUIS SOLOMON, ESQ.

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ALSO PRESENT:

ROBERT RUDIS, Videographer

IAN DUMAIN, CYRULNIK FATTARUSO, LLP

PAUL FATTARUSO, ESQ.,

CYRULNIK FATTARUSO, LLP

MONICA YANG, REED SMITH, LLP

MEL-LI da SILVA VINT, BREVET

DAVID SPINLEY, BREVET

COLIN UNDERWOOD, ESQ., REED SMITH, LLP

ADINA LEVINE, ESQ.

RUNI BEHAL, ESQ.

* * *

F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

1
2 THE VIDEOGRAPHER: Good
3 morning. We are now going on the
4 record at 9:08 Eastern Daylight Time
5 on October 5, 2021.

6 Please note that microphones
7 are sensitive and may pick up
8 whispering and private conversations.
9 Please mute your microphone whenever
10 possible. Audio and video recording
11 will continue to take place unless
12 all parties agree to go off the
13 record.

14 This is Media Unit 1 of the --
15 this is Media Unit 1 of the video
16 deposition taken by counsel for the
17 Plaintiff in the matter of Paul
18 Iacovacci versus Brevet Holdings,
19 LLC, et al, filed in the United
20 States District Court, Southern
21 District of New York, Case Number
22 1:18-cv-08048.

23 This deposition is being held
24 remotely.

25 My name is Robert Rudis and I

1
2 am the videographer, the Court
3 Reporter is Karyn Chiusano, and we
4 represent the firm Veritext Legal
5 Solutions, New York.

6 I am not related to any party
7 in this action, nor am I financially
8 interested in the outcome.

9 Counsel will please now state
10 their appearances and affiliations
11 for the record.

12 If there are any objections to
13 proceeding, please state them at the
14 time of your appearance, beginning
15 with the noticing attorney.

16 MR. CYRULNIK: Good morning.

17 My name is Jason Cyrulnik from
18 from Cyrulnik Fattaruso, and I
19 represent the Plaintiff.

20 With me are several colleagues,
21 who I don't think need to make
22 appearances on the record.

23 MR. SOLOMON: The witness is
24 here in one of Reed Smith's offices.

25 I am Lou Solomon. With me in

1 MARK CALLAHAN

2 the room is Monica Yang, and there
3 are some other, some other attorneys
4 that have called in.

5 And we are all nice and cozy
6 here getting COVID.

7 So, ready when you are.

8 THE VIDEOGRAPHER: Is that all
9 of us? I imagine that is.

10 Will the Court Reporter please
11 swear in the witness?

12 M A R K C A L L A H A N, called as a
13 witness, having been first duly sworn by a
14 Notary Public of the State of New York, was
15 examined and testified as follows:

16 THE VIDEOGRAPHER: All right.

17 MR. CYRULNIK: Thank you.

18 EXAMINATION BY

19 MR. CYRULNIK:

20 Q. Good morning, Mr. Callahan.

21 My name is Jason Cyrulnik. I
22 represent the Plaintiff in this action,
23 Paul Iacovacci.

24 Before we get started, let me
25 ask you a couple of logistics questions.

1 MARK CALLAHAN

2 You're in Reed Smith's office
3 with Mr. Solomon; is that correct?

4 A. That is correct.

5 Q. Did you have an opportunity to
6 set up your Veritext Exhibit Share
7 software?

8 A. It is, Monica Yang has set that
9 up next to me here.

10 Q. All right. Well, when we
11 introduce our first exhibit, we'll test it
12 out. I think yesterday we took a
13 deposition, there were some technical
14 issues on one of the ends, so hopefully
15 we'll all be able to set up and we'll be
16 able to do exhibits that way, if not, we'll
17 will figure out an alternate mechanism, but
18 I'm glad you were able to set it up.

19 Have you ever sat for a
20 deposition before, Mr. Callahan?

21 A. Yes, I have.

22 Q. Approximately, how many times
23 have you sat for deposition?

24 A. Um, probably more than three,
25 less than six.

1 MARK CALLAHAN

2 Q. Okay. That -- that's helpful.

3 Were those in connection with
4 litigations to which you were a party?

5 A. They were in connection to
6 litigations for which a Brevet entity was
7 -- was a party.

8 Q. Okay. So, all of the
9 depositions that you can recall were
10 depositions that you sat for in which you
11 were not personally named as a party, but
12 one or more of the Brevet entities were
13 named as a party?

14 A. I believe that is true, yes.

15 Q. Okay. Have you ever sat for a
16 virtual deposition before?

17 A. Yes. I have.

18 Q. Okay. And when was that?

19 A. In -- during COVID, over the
20 last year and a half.

21 Q. And in connection with what
22 litigation was that deposition taken?

23 A. That was in connection with a
24 litigation for a borrower of one of the,
25 um, one of the Brevet funds.

1 MARK CALLAHAN

2 Q. What was the name of that
3 borrower?

4 A. I think there were a number of
5 borrower names, but I think the main one
6 was [REDACTED]

7 Q. And where was that litigation
8 taking place?

9 A. I -- I -- I don't know. I
10 don't recall whether or not that was --
11 what the court was. I think it was in New
12 York Court.

13 Q. Do you know if it was Federal
14 Court or State Court?

15 A. I -- I don't recall.

16 Q. Is that -- is that still an
17 active litigation?

18 A. That is -- I believe that's
19 still an active litigation, yes.

20 Q. Okay. Is that the only time
21 that you sat for a virtual deposition?

22 A. I believe that's the only time
23 I sat for a virtual deposition.

24 Q. Okay. I'll go through just a
25 new ground rules, but they'll go much more

1 MARK CALLAHAN

2 quickly given that you sat for both
3 depositions and virtual depositions
4 previously. Um, if you can't hear me or if
5 you need me to repeat a question, you'll
6 let me know; is that okay?

7 A. Yes.

8 Q. If I ask you a question that
9 you don't understand, also please let me
10 know, all right?

11 A. Yes.

12 Q. Otherwise, I will assume that
13 you understood my question and I will wait
14 for your answer.

15 After I ask a question, Mr.
16 Solomon may state an objection for the
17 record. Um, you should go ahead and answer
18 the question after Mr. Solomon's objection
19 unless you are specifically instructed not
20 to answer the question.

21 Do you understand that?

22 A. Yes.

23 Q. Okay. And as you likely know,
24 the Court Reporter here is typing
25 everything that you are saying in order to

1 MARK CALLAHAN

2 generate a transcript of this deposition.

3 As a result, it's important that you
4 provide verbal responses instead of
5 non-verbal responses like nodding of your
6 head.

7 Does that make sense?

8 A. Yes, it does.

9 Q. And finally, if you'd like to
10 take a break at any point during this
11 deposition, please just let me know. I
12 will generally try to finish my line of
13 questioning and schedule that break. If
14 it's more urgent than that, you'll let me
15 know, we can break at that point in time.
16 The only caveat being that if there's a
17 question that I asked that's pending, that
18 is a question to which you have not fully
19 provided a response, I will ask you to
20 answer that question before we break, okay?

21 A. Yes.

22 Q. Okay. Are you aware of any
23 reason why you would be unable to provide
24 confident testimony here today?

25 A. No.

1 MARK CALLAHAN

2 MR. CYRULNIK: I am hearing
3 some background noise. I don't know
4 if it's someone who's not on mute,
5 but I just wanted like to flag that
6 for whoever may be off mute.

7 Q. Are you on any medications or
8 do you have any medical conditions that
9 might effect your memory?

10 A. I am not on any medications and
11 I don't have any -- I am not on any
12 medications that would effect my memory and
13 I don't have any conditions that would
14 effect --

15 THE COURT REPORTER: I can't
16 hear you, sir.

17 THE VIDEOGRAPHER: You had
18 trouble hearing the witness?

19 THE COURT REPORTER: Yes, he's
20 very low at the end, I can't really
21 hear him.

22 THE VIDEOGRAPHER: Would it be
23 close possible to bring his mic a
24 little closer, the conference room,
25 mic, please.

1 MARK CALLAHAN

2 Thank you.

3 A. Should I repeat that?

4 THE COURT REPORTER: The
5 ending.

6 (Whereupon, the referred to
7 answer was read back by the
8 Reporter.)

9 A. -- effect my memory.

10 MR. CYRULNIK: Okay.

11 Q. Because this is a remote
12 deposition, I just have a few questions
13 about your environment and your
14 surroundings.

15 I know Mr. Solomon is with you.
16 Can you describe who, if
17 anyone, is in the room aside from the two
18 of you?

19 A. In addition to the two of us,
20 Monica Yang.

21 Q. Okay. And is that everyone.

22 A. That's everybody in the room.

23 Q. Okay. Do you have any
24 documents related to this case in the room
25 with you?

1 MARK CALLAHAN

2 MR. SOLOMON: I brought some
3 documents. But as of now, the
4 witness has them.

5 MR. CYRULNIK: Well, I am
6 asking the witness.

7 Q. Do you have any documents
8 related to this case in the room with you
9 that you're aware of? And you can now take
10 account of what your counselor just
11 testified to.

12 A. There are documents in the
13 room.

14 Q. Are you aware --

15 A. Right now in front of me is
16 just a blank pad of paper.

17 Q. Okay. Are you aware of what
18 documents are in the room with you today?

19 A. I am aware that there are some
20 policies and procedures for Brevet, an
21 employee handbook for Brevet and I believe
22 an LLC agreement.

23 MR. SOLOMON: We don't have to
24 be obscure, Mr. Cyrulnik. We have --
25 but the witness has nothing with

1 MARK CALLAHAN

2 respect to his personal deposition.

3 MR. CYRULNIK: Mr. Solomon, I
4 think I got the answer from the
5 witness. I would just, at the
6 outset, please limit your
7 interjections to objections to form.

8 MR. SOLOMON: But I'm gonna
9 finish my sentence.

10 MR. CYRULNIK: I mean, you're
11 gonna --

12 MR. SOLOMON: You brought some
13 documents insofar you may ask the 30
14 (b)(6) question, and so if as of when
15 you will make that clear, then we may
16 have some documents for that.

17 Thank you.

18 MR. CYRULNIK: Thanks. And
19 again, Mr. Solomon, just so we can
20 get off on the right foot here, I'm
21 gonna ask you to please be vigilant
22 about your obligations in this
23 deposition and not interrupt the
24 questioning. You're allowed to
25 object to the form of a question. If

1 MARK CALLAHAN

2 something comes up related to
3 privilege, you're allowed consult the
4 witness. But please these are
5 questions for Mr. Callahan, not for
6 you.

7 MR. SOLOMON: I don't need your
8 advice about what I can answer and
9 what I can't. So, I think I gave you
10 a proper answer.

11 Thank you, continue.

12 MR. CYRULNIK: Mr. Solomon,
13 just to be clear: You didn't give me
14 a proper answer 'cause nobody asked
15 you a question. And if you don't
16 know that, you might need advice
17 about what you're allowed to do.

18 But I'm asking you to please
19 refrain from interrupting the
20 deposition, 'cause it's 10 minutes
21 into the deposition and we have had
22 two times you interjected for no
23 reason other than to preempt an
24 answer for the witness.

25 So, please, I know that you're

1 MARK CALLAHAN

2 anxious to get involved, please limit
3 your objections to objection to form
4 --

5 MR. SOLOMON: You know, you're
6 misstating the record. I'm not
7 preempting, I'm not getting involved.
8 I answered the question with respect
9 to documents in the room because
10 they're under my -- my custody right
11 now.

12 MR. CYRULNIK: Mr. Solomon,
13 nobody asked you a question. These
14 questions are directed only to Mr.
15 Callahan. Going forward, if there's
16 a question directed to you, it will
17 preceded by the words Lou or Mr.
18 Solomon, just for clarity.

19 Q. So, Mr. Callahan, I think you
20 had mentioned some policies and procedures.

21 And what were the other
22 documents that you were aware that you had
23 in the room with you or your counsel had in
24 the room with him?

25 A. I believe the employee handbook

1 MARK CALLAHAN

2 and, um, some 30(b)(6) materials.

3 Q. Okay. And what do you mean by
4 30(b)(6) materials?

5 A. The topics related to 30(b)(6).

6 Q. Got it.
7 Anything else that you're aware
8 of?

9 A. Not that I'm aware of.

10 Q. Okay. Aside from the computer
11 in front of you, are there any electronic
12 devices in the room with you to your
13 knowledge?

14 A. There's a computer in front of
15 me, there's a computer to the left of me,
16 which I believe is for the -- the, um, your
17 posting of exhibits. There's another
18 computer further to the left of me, which
19 has the picture for -- for me and Lou
20 Solomon and then there is a computer in
21 front of Monica Yang. There are cell
22 phones, three cell phones that I see in the
23 room.

24 Q. Okay, thanks.
25 Anything else?

1 MARK CALLAHAN

2 A. There are phones.

3 Q. What was that?

4 A. There are phones. I -- that's
5 all I can see right now. I am not sure if
6 there's anything else.

7 Q. Can you agree to refrain from
8 checking or using your phone to communicate
9 with anyone while we are on the record?

10 A. Yes.

11 Q. Okay. You understand that you
12 are a Defendant in this action, correct?

13 A. Yes.

14 Q. And you're represented by the
15 Reed Smith's firm; is that right?

16 A. Yes. That is correct.

17 Q. Any other firms represent you
18 in your personal capacity?

19 A. I -- I have not gotten separate
20 counsel in my personal capacity.

21 Q. So, just the Reed Smith firm?

22 A. I -- I believe that's the case.

23 Q. Okay. And is Brevet paying the
24 fees that you are incurring from Reed
25 Smith?

1 MARK CALLAHAN

2 A. Brevet is paying the Reed Smith
3 fees, yes.

4 Q. Did you speak to anyone about
5 today's deposition?

6 A. I -- I spoke to Reed Smith
7 about today's deposition.

8 Q. With the exception of your
9 counsel, did you speak to anyone else about
10 today's deposition?

11 A. Not any -- not in any detail.
12 I told my wife I was coming for a
13 deposition.

14 Q. Okay.

15 A. And then in terms of scheduling
16 of the deposition, I believe I spoke with
17 Mei-Li da Silva Vint in our office
18 regarding when -- when the deposition would
19 occur.

20 Q. Okay. Anyone else?

21 A. I can't -- I can't recall
22 speaking to anybody else about the
23 deposition.

24 Q. Any conversations with
25 Mr. Monticciollo about the deposition?

1 MARK CALLAHAN

2 A. I did not have any
3 conversations with Mr. Monticciolo about
4 the deposition.

5 Q. To your knowledge, does
6 Mr. Monticciolo know that you are being
7 deposed as we speak?

8 A. I don't know.

9 Q. Okay. Can you tell me which of
10 the Brevet entities is paying the
11 attorneys' fees that you referenced a
12 couple of minutes ago?

13 A. As I sit here right now, I
14 don't know which actual entity is paying
15 those fees.

16 Q. Who would know the answer to
17 that question?

18 A. Our finance department.

19 Q. And -- and who in particular
20 would you direct me to if I wanted to know
21 the answer to that question?

22 A. Um, probably Aaron.

23 Q. Aaron who?

24 A. Um, I am blanking on Aaron's
25 last name.

1 MARK CALLAHAN

2 Q. Okay.

3 A. Aaron in our finance
4 department.

5 Q. I thought you were just being
6 coy. I didn't want to call you out on a
7 memory lapse. That's fine, I forget
8 people's names all the time.

9 Aaron, in your finance
10 department.

11 A. I believe so. That is correct.

12 Q. Would Aaron be the one which
13 determines which entity pays the fees or he
14 would just be aware of which entity is
15 actually having the money come out of its
16 account?

17 A. Aaron would be aware of which
18 entity had the money coming out of the
19 account.

20 Q. And who would be in charge of
21 deciding which Brevet entity actually paid
22 the fees?

23 A. As I sit here right now, I
24 don't know.

25 Q. Well, would you be involved in

1 MARK CALLAHAN

2 making that decision?

3 A. As I sit here right now, I
4 don't believe so.

5 Q. Your -- your -- do you think
6 Mr. Monticciolo is the one who decides
7 which Brevet entity pays for what?

8 A. As I sit here right now, I
9 still don't -- I don't know. It could be a
10 number of people.

11 Q. And it could be a number of
12 Brevet entities that are actually paying
13 for the fees incurred in connection with
14 the Defense in your personal capacity?

15 A. As I sit here right now, I
16 believe that, yes, it can be a number of
17 entities that are paying the fees.

18 Q. Do you know why the entity that
19 you can't identify, but that you know is a
20 Brevet entity is paying for your legal
21 bills?

22 A. As I sit here right now, I
23 don't know why that is -- that -- the
24 specific entity is paying the legal bills.

25 Q. Did you ask anyone to cover

1 MARK CALLAHAN

2 your legal fees?

3 A. I -- as I sit here right now, I
4 don't believe -- I don't recall asking
5 anybody to cover my legal fees.

6 Q. So, why do you think your legal
7 fees are being covered by some other
8 entity?

9 A. As I sit here right now, I
10 believe legal fees are being covered
11 because I am an employee of one of those
12 entities and they member in others.

13 Q. And as between the entities in
14 which you are a member and the entities in
15 which you are an employee or the entities
16 in which you have both, you don't know
17 which of those would be the ones that is
18 covering your attorneys fees in this
19 litigation; is that correct?

20 A. As I sit here right now, I
21 don't know which entity is covering. There
22 also are no entities for which I am both an
23 employee and a member.

24 Q. All right. Thanks for that
25 clarification.

1 MARK CALLAHAN

2 Okay. But you don't know
3 whether it's an entity for which you are an
4 employee or an entity for which you are a
5 member?

6 A. As I sit here right now, I
7 don't believe it's an entity for which I am
8 a member. But I don't know if it's an
9 employ -- if it's an entity for which I am
10 an employee.

11 Q. Would there be another option
12 -- if you don't think it is an entity for
13 which you are a member and if it was not an
14 entity for which you are an employee, is
15 there another entity that might be covering
16 your legal fees?

17 MR. SOLOMON: I object to the
18 form.

19 A. Sorry. Can you repeat the
20 question?

21 Q. Sure, yeah.

22 I am just trying to understand
23 if I am missing a third option. As I
24 understood your testimony, you candidly
25 testified that you didn't think that one of

1 MARK CALLAHAN

2 the entities for which you are a member was
3 covering the legal fees and that you
4 weren't sure whether it was an entity for
5 which you are an employee. So, I am asking
6 whether there was another entity for which
7 you are neither an employee nor a member
8 that might be covering your attorneys fees,
9 to your knowledge?

10 MR. SOLOMON: I object to the
11 form.

12 A. I believe that there are other
13 entities for which I am neither a member or
14 an employee and one of those entities could
15 be the entity that is ultimately paying
16 this expense. But as I said earlier, I
17 don't know which entity is paying the
18 expense.

19 Q. I understand.

20 Can you identify the Brevet
21 entity for which you are neither an
22 employee or a member, just as an example?

23 [REDACTED]

24 Q. Okay. And if you were neither
25 an employee nor a member of a certain

1 MARK CALLAHAN

2 Brevet entity, can you tell me why you
3 think that entity might still be paying
4 your attorneys' fees?

5 MR. SOLOMON: Object to form.

6 It calls for speculation.

7 A. As I sit here right now, I
8 think I've already answered that that I
9 don't know why.

10 Q. Okay. But you think it's
11 possible that a Brevet entity for which you
12 were neither an employee nor a member might
13 be paying your legal fees?

14 MR. SOLOMON: Objection. Same.

15 A. As I sit here right now, since
16 I don't know which entity is paying, it's
17 possible that an entity that you described
18 could be paying.

19 Q. Understood, okay.

20 What did you do to prepare for
21 today's deposition?

22 A. I had participated in
23 conference calls with my lawyers.

24 Q. Okay. Apart from conference
25 calls with lawyers, did you do anything

1 MARK CALLAHAN

2 else to prepare for your deposition today?

3 A. I reviewed my affidavits and
4 some of the other documentation that has
5 been produced in this case.

6 Q. Okay. Can you -- can you tell
7 me -- we'll get to the preparation sessions
8 with your attorneys in just a moment, but
9 let me focus for a moment on the documents
10 that you reviewed in your testimony.

11 Apart from those documents, do
12 you recall any other documents you reviewed
13 outside of the prep sessions with your
14 lawyers?

15 A. I recall that I reviewed some
16 of the -- some of the filings. I don't
17 recall what they're -- what they're called,
18 some of the claimed counterclaims and that
19 sort of stuff.

20 Again, I am not a lawyer and I
21 don't recall what those are specifically
22 called.

23 Q. Fair enough, okay.

24 A. I reviewed some of Brevet's
25 policies and procedures. I reviewed

1 MARK CALLAHAN

2 Brevet's employee handbook. I reviewed
3 some e-mails. I don't -- I don't recall
4 what else I -- what else I reviewed.

5 Q. The e-mails that you reviewed,
6 were those all e-mails that your attorneys
7 sent to you or provided -- provided you, or
8 did you review any e-mails on your own?

9 A. I believe I -- I reviewed
10 e-mails from my attorneys as well as on my
11 own.

12 Q. Okay. Focussing on the e-mails
13 that you reviewed on your own: Can you
14 recall for me, and feel free to take a
15 moment to think about it, and I know I am
16 asking you some detailed questions, but can
17 you recall for me which e-mails you
18 reviewed on your own either by date or just
19 by general description?

20 A. As I sit here right now, I
21 don't recall any specific e-mails that I --
22 that I reviewed on my own.

23 Q. Okay. Roughly how much time
24 did you spend reviewing documents on your
25 own, that is separate from counsel, to

1 MARK CALLAHAN

2 prepare for today's deposition?

3 A. Um, I would -- as I sit here
4 right now, I am just trying to count in my
5 head, how many -- you know, it was a matter
6 of hours. Um, maybe it's five hours
7 reviewing documents.

8 Q. Okay. And anything else?

9 A. Sorry, I missed that?

10 MR. SOLOMON: What was that?

11 Q. That's your best estimate?

12 A. That's my best estimate, yes.

13 Q. For the e-mails that you
14 reviewed separate from counsel, did you
15 perform any searches in your e-mail
16 mailbox, to find those e-mails?

17 A. I don't recall doing any
18 searches in my e-mail mailbox.

19 Q. So -- sorry, I didn't mean to
20 cut you off.

21 Were you done?

22 A. Yes.

23 Q. Okay. So, apart from e-mails
24 that were furnished to you by counsel, the
25 other e-mails that you would have reviewed

1 MARK CALLAHAN

2 would have been e-mails that you were
3 specifically pulling up by scrolling
4 through your -- your -- your mail files and
5 knowing what you were looking for as
6 opposed to using a search protocol of some
7 sort; is that right?

8 A. Um, I don't believe that is
9 correct. I -- I -- I said I did not do a
10 search of my mailbox.

11 Q. Okay. Thanks for that
12 clarification.

13 What -- did you do any search
14 of any kind?

15 A. I did a search of Global Relay.

16 Q. And what's Global Relay?

17 A. Global Relay is the, um -- is
18 the company that we utilize, I guess the
19 service that we utilize, in order to comply
20 with SEC requirements given the fact that
21 Brevet Capital Management, one of the
22 Brevet entities is a registered investment
23 advisor, and so we are required to maintain
24 all -- all files, all materials, and that
25 includes e-mails.

1 MARK CALLAHAN

2 And so, the Global Relay system
3 is the system by which we -- we maintain
4 all of our -- our e-mail correspondence in
5 order to comply with those regulations.

6 Q. Understood.

7 So, if you wanted to pull an
8 e-mail, the -- the most efficient way of
9 doing that would be to deploy searches
10 within Global Relay rather than within a
11 traditional mailbox, via Outlook or an
12 online G-mail or Yahoo or anything like
13 that, right?

14 MR. SOLOMON: Object to form.

15 A. I don't -- I don't know what
16 you mean by most efficient. It would
17 really depend on -- on what you're looking
18 for.

19 Q. Well, are there times that you
20 do search your mailbox as opposed to
21 searching Global Relay for an e-mail?

22 A. Yes. There are times when I
23 search my -- my Outlook e-mail inbox for
24 e-mails for documents and something I am
25 looking for.

1 MARK CALLAHAN

2 Q. How would you go about deciding
3 whether or not you wanted to search your
4 mailbox as opposed to searching Global
5 Relay for a particular e-mail?

6 A. As I sit here right now, I
7 would say that, you know, I probably would
8 -- would think about what the timing was of
9 an e-mail.

10 Q. Okay. Can you elaborate on
11 that, how would the timing impact your
12 decision?

13 A. The -- there is a -- with
14 respect to the Outlook e-mail inbox, the
15 Outlook e-mail inbox doesn't have, um --
16 doesn't maintain all of the e-mails in
17 that -- in that inbox if it goes back for
18 an extended period of time.

19 So, for example, if you're
20 looking for e-mails from 10 years ago, that
21 would not be contained, not be found in a
22 search of your Outlook e-mail inbox.
23 Whereas if you were looking for a, um,
24 something that you had expected you
25 received a week prior, a month prior, a

1 MARK CALLAHAN

2 year prior, um, that is something that, um,
3 perhaps future work would be more efficient
4 to use the -- the Outlook e-mail search box
5 versus going to the Global Relay system
6 which is, um, a little bit more cumbersome,
7 but more exhaustive.

8 Q. Got it. That's helpful
9 clarification, thank you.

10 So, I take it that the e-mails
11 that you were searching for and ultimately
12 reviewed independent of the ones that you
13 reviewed with counsel in preparation for
14 this deposition, were e-mails that predated
15 that time period that you just referenced
16 with respect to which your local Outlook,
17 um, goes back that far.

18 Is that a fair -- fair
19 deduction on my part?

20 MR. SOLOMON: Object to the
21 form.

22 A. I -- I believe that it's fair
23 to say that for -- looking for -- for
24 e-mails that are more than a year old, I
25 would -- it would be more likely that I

1 MARK CALLAHAN

2 would review them on Global Relay than it
3 was for me to review them Outlook.

4 Q. In connection with this case,
5 you and the Brevet entities received many
6 document requests, correct?

7 A. It -- it's my understanding
8 that we received many document requests,
9 that's correct.

10 Q. Do you know what role Global
11 Relay played in the document production
12 process?

13 A. As I sit here right now, I
14 don't know what specific role Global Relay
15 played in that process.

16 Q. Did you give access to your
17 Global Relay over to your attorneys or did
18 you just give them access to separate
19 inboxes or other files?

20 A. I -- I was not -- you know, as
21 I sit here right now, I don't know because
22 I was not involved in -- in the granting of
23 access for the production of that
24 information. But it would be, um -- it's
25 highly likely that they were given reports

1 MARK CALLAHAN

2 in order -- access or, you know,
3 communicated with Global Relay.

4 Q. And that's highly likely
5 because that's where most of your data from
6 the period that you were producing
7 documents were stored?

8 A. That is one of the locations
9 that it would, you know -- as I sit here
10 right now, that's one of the locations
11 where it would be stored.

12 Q. And just because I don't have
13 Global Relay, I want to make sure I
14 understand a little bit about the database
15 or the system.

16 The way that Brevet stores
17 data, there are documents and other
18 communications that are stored in its
19 Global Relay system that would not be found
20 anywhere else at Brevet, correct?

21 A. As I sit here right now, I
22 don't -- I don't know what you mean by
23 documents.

24 Q. Well --

25 A. Global Relay is a system that

1 MARK CALLAHAN

2 -- that tracks -- that -- that -- that
3 captures all e-mails. So, to the extent
4 that you're saying there is a document
5 contained within an e-mail then -- then I
6 -- you know, I defer to our technology
7 group to determine whether or not that
8 would not be cap- -- that document
9 literally would not be captured somewhere
10 else on the system.

11 Q. And just to be clear, I
12 appreciate the clarification question:

13 When I refer to documents, I am
14 including e-mails throughout this
15 deposition or otherwise.

16 So, with that clarification: I
17 take it you would say that there are many
18 documents that are found exclusively on the
19 Global Relay system at Brevet; is that
20 fair?

21 A. It's my understanding that --
22 that if you're using the term "documents"
23 to -- to refer to e-mails, there -- it is
24 my understanding that there are, um,
25 e-mails that may or may not, I don't know,

1 MARK CALLAHAN

2 but may be also stored on -- on Brevet's
3 system.

4 Again, that's for the
5 technology department. I don't -- I do not
6 know whether or not a backup of Global
7 Relay is saved onto, um, the network, the
8 systems of Brevet separately.

9 Q. So, you don't know if there is
10 a backup of the Global Relay system or you
11 do know that there us a backup, but you
12 don't know whether it's saved on Brevet's
13 systems?

14 A. It is my understanding that
15 Global Relay itself has backups, but that's
16 separate and apart from whether or not any
17 of those backups on are Brevet's system
18 which -- which, again, I do not know that
19 answer.

20 Q. Okay. And did you, um -- when
21 I say "you," I am referring to Brevet.

22 Did Brevet, um, start using
23 Global Relay after it had lost a fair
24 amount of data back in the 2005 to 2008
25 time period?

1 MARK CALLAHAN

2 Does that ring a bell?

3 A. As I sit here right now, that
4 does not ring a bell at all.

5 Q. When -- when do you recall
6 starting to use Global Relay?

7 A. My recollection of -- of, um,
8 starting to use Global Relay is -- as I sit
9 here right now, is that it was, um, done in
10 conjunction with requirement to do so,
11 similar to our reg- -- registration as a
12 registered investment advisor.

13 As I sit here right now, I
14 don't know what the date of that
15 registration was, but I would imagine that
16 the adoption of Global Relay took place
17 prior to the date of registration of Brevet
18 Capital Management as a registered
19 investment advisor.

20 Q. What's your best estimate or
21 best recollection of the year in which
22 Brevet Capital Management registered as a
23 registered investment advisor?

24 A. As I sit here right now? Best
25 estimate would be, you know, probably 10

1 MARK CALLAHAN

2 years ago. So, I'd say, you know, 2010 to
3 2012, somewhere in there would be my best
4 guess.

5 Q. Okay. And if I -- just to make
6 sure I understood your testimony a moment
7 ago, you believe that Brevet adopted Global
8 Relay, either shortly before or
9 contemporaneously with its Brevet Capital
10 Management Team entity becoming a
11 registered investment advisor; is that
12 right?

13 MR. SOLOMON: Object to form.

14 A. As I sit here right now, I
15 believe -- I believe that -- that it was
16 required prior to. So, I believe that it
17 was Global Relay was -- was engaged or
18 purchased, whatever phrase you want to call
19 it, prior to the, um, the date of
20 registration. I -- I don't know whether or
21 not it was -- at the time, I think it was,
22 you know, perhaps a year or two before, but
23 I don't know.

24 Q. Okay. But you do recall there
25 being a period of time during which Brevet

1 MARK CALLAHAN

2 operated that it didn't have an e-mail
3 backup system in place prior to Brevet
4 becoming -- one of its entities becoming a
5 registered investment advisor?

6 A. I -- as I sit here right now, I
7 do recall there was a time where we didn't
8 have Global Relay. However, at that point
9 in time, there were frequent back --
10 backups of what I believe were PST files to
11 each of the -- each of the, um, employees'
12 e-mails, um, were backed up, um, into those
13 PST files so that you could go back to PST
14 files to identify older e-mails.

15 I also recall that, um, there
16 were no restrictions on the amount of
17 e-mails that would be saved in your system
18 so that a search of your Outlook system
19 would identify older e-mails.

20 Q. Got it.

21 And that changed when you --
22 when you switched over to Global Relay?

23 A. As I sit here right now, I
24 don't know when that changed. I do know
25 that for me, personally, there are times

1 MARK CALLAHAN

2 when the -- the number of e-mails and the
3 size of the e-mails in my Outlook, um,
4 reaches a -- whatever Microsoft's capacity
5 is or, you know, it makes my computer slow
6 and, um, our tech department has to do
7 something to -- to free up space.

8 But -- in terms of specifics, I
9 don't have any of those.

10 Q. Okay. And you testified that
11 you don't recall there ever being an
12 occurrence of a loss of e-mail data at
13 Brevet since its inception?

14 MR. SOLOMON: I object to the
15 question.

16 A. As I sit here right now, I
17 don't recall any loss of e-mail data.

18 However, I am not sure what
19 you're -- what you're -- what you're
20 referring to. There is never -- I don't
21 recall there ever being an instance where
22 we couldn't find an e-mail that -- that we
23 needed.

24 Q. All right. And do you recall
25 -- just to clarify your last answer, and I

1 MARK CALLAHAN

2 think you did get my intended question
3 correct, but, do you ever recall there
4 being a point in time when somebody wanted
5 to retrieve an e-mail from your inbox, but
6 the e-mail was no longer available because
7 it had unintentionally gotten deleted?

8 A. As I sit here right now, I
9 don't recall any situation like that where
10 an e-mail was unintentionally deleted. And
11 with respect to -- since we have had Global
12 Relay, I don't think that's physically
13 possible.

14 Q. Okay. Does Global Relay do
15 anything other than e-mail backups? Does
16 it backup text messages or other forms of
17 communication, for example?

18 A. As I sit here right now, I
19 don't know what else Global Relay does.

20 Q. Is it your understanding that
21 as a registered investment advisor that all
22 Brevet entities associated with Brevet
23 Capital Management are required to use a
24 service like Global Relay in order to
25 preserve their e-mails?

1 MARK CALLAHAN

2 MR. SOLOMON: Object to the
3 question.

4 A. As I sit here right now, I am
5 not an expert in -- in what -- how broad
6 the SEC's, um, mandate is. However, we --
7 we -- if we're not required to, we still
8 do, um, maintain e-mails for all -- all
9 Brevet entities.

10 Q. Okay. So, just to have an
11 abundance of caution?

12 A. As I said, I -- as I sit here
13 right now, I don't know whether or not
14 it's -- whether or not it's out of abundane
15 of caution or whether it's required.

16 Q. Okay. And same question with
17 respect to non-e-mail for- -- communication
18 platforms or -- or communications; sitting
19 here today, you don't know one way or the
20 other whether or not the SEC requires
21 Brevet Capital Management, for example, to
22 keep some sort of a backup in place for
23 non-e-mail communications; is that fair?

24 A. Yeah. As I sit here right now,
25 again, I am not an expert in SEC

1 MARK CALLAHAN

2 requirements and -- and what exactly the
3 SEC requires or doesn't require.

4 Q. So, you don't know one way or
5 the other?

6 A. As I sit here right now, I
7 don't know one way or the other because I'm
8 not an expert with respect to what the SEC
9 and registered investment advisor
10 requirements are.

11 Q. Does Brevet have a resident
12 expert on that subject matter, SEC or
13 registered advisor -- investment advisor
14 requirements?

15 Do you understand?

16 A. As I sit here right now, my
17 understanding is that there are main -- our
18 expertise lays with outside counsel and the
19 person internally at Brevet that interfaces
20 with outside counsel would be Mel Li da
21 Silva Vint.

22 Q. Okay. And who's that outside
23 counsel?

24 A. As I sit here right now, I
25 believe that the outside counsel with

1 MARK CALLAHAN

2 respect to any SEC registered investment
3 advisor matters would be Curtis Mallet.

4 Q. Okay. And prior to Ms. Da
5 Silva Vint, did you have a resident expert
6 on SEC and registered investment advisor
7 related issues that was in-house at Brevet?

8 MR. SOLOMON: Object to the
9 question.

10 A. As I said before, our -- our
11 main expertise was Curtis Mallet and we
12 have had utilized Curtis Mallet I believe
13 since -- since prior to -- deciding to and
14 during the registration process as a
15 registered investment advisor.

16 I believe that I said that Mel
17 Li was a -- was the internal person who
18 interfaced with Curtis Mallet versus being
19 the internal, you know, expert, however you
20 described it.

21 Q. Okay. Yeah, I didn't mean to
22 imply otherwise, and if my question did,
23 thanks for the clarification.

24 But prior to Ms. Da Silva Vint
25 entering the role that you just described,

1 MARK CALLAHAN

2 was somebody else serving the role of
3 interface with your outside counsel at
4 Curtis Mallet?

5 A. As I sit here right now, I
6 believe that there has been a number of
7 people over the years that have interfaced
8 with -- with Curtis Mallet. That could
9 be -- you know, there's a lot of people.

10 Q. Was it one person at any given
11 period?

12 A. As I sit here right now, I
13 don't know because I wasn't -- wasn't the
14 one involved as to whether or not -- at
15 some points in time it was one and at other
16 points in time it was more than one.

17 Q. Do you know who filled that
18 role immediately prior to Ms. Da Silva
19 Vint?

20 A. As I sit here right now, I
21 don't know who fulfilled that role
22 immediately prior to Ms. Da Silva Vint.

23 Q. Okay. I think you had
24 described for me your preparation separate
25 from your sessions or -- or conferences

1 MARK CALLAHAN

2 with counsel.

3 Can you now just summarize for
4 me, apart from the approximately five hours
5 that you spent reviewing documents on your
6 own to prepare for today's deposition,
7 roughly how much time did you spend to
8 prepare for today's deposition in meetings
9 with counsel?

10 MR. SOLOMON: I object to the
11 question.

12 Go ahead.

13 A. My -- as I sit here right now,
14 my recollection is that, um, perhaps had
15 four conference calls.

16 Q. Okay.

17 A. The shortest of which may have
18 been an hour and the longest of which may
19 have been three hours.

20 Q. Okay. Cumulatively safe to say
21 you had roughly 10 hours of prep, or is
22 that too -- too high?

23 A. It would be -- I -- as I sit
24 here right now, without going back to my
25 calendar, I'd say 10 hours, give or take a

1 MARK CALLAHAN

2 couple of hours either way.

3 Q. Okay. Those four sessions,
4 were those in person, over the phone, over
5 a video conferencing platform?

6 A. Those sessions were all over,
7 um, you know, either -- either a conference
8 call or video call. There were there
9 meetings in person.

10 Q. Okay. And who attended each of
11 those sessions; was it the same group of
12 people or did it differ based on which
13 session we're talking about?

14 A. You know, as I sit here right
15 now, I'm not exactly sure who was on each
16 of the calls. I would imagine it differed.

17 The people that were on similar
18 to this, where you can't actually see
19 everybody that's on, the people that were
20 on video on probably all the calls were Lou
21 Solomon, um, Monica Yang, Collin Underwood.
22 And I believe there were some other people
23 on, but we were the ones who were doing the
24 majority of the talking.

25 Q. Understood.

1 MARK CALLAHAN

2 And apart from your -- the
3 lawyers that you just identified and maybe
4 some other lawyers at Reed Smith, were
5 there any other lawyers or non-lawyers
6 involved in those discussions that you are
7 aware?

8 A. As I sit here right now, I
9 believe that, um, Mel Li da Silva Vint
10 might have been on of the -- one or a
11 couple of those calls. I don't believe she
12 was on all of them.

13 And I believe that David
14 Spinley was on, again, not all of them, but
15 may have been on one of the calls.

16 Q. And who's David Spinley?

17 A. Um, I believe David Spinley is
18 in our -- he's in our compliance legal
19 department. He's -- I -- I don't believe
20 he's a lawyer, I think he's a paralegal or
21 something like that.

22 Q. Okay. And Ms. Da Silva Vint,
23 is she an attorney?

24 A. I believe that Ms. Da Silva
25 Vint is an attorney.

1 MARK CALLAHAN

2 Q. Did your lawyer show you any
3 documents that refreshed your recollection
4 of events that transpired in connection
5 with this case?

6 A. Yes, my lawyers provided
7 documents to me that refreshed my memory.

8 Q. And can you describe for me
9 which documents they showed you that
10 refreshed your memory?

11 A. The documents that -- that
12 refreshed my memory that I spent the most
13 time on, as I said before, were the -- were
14 my affidavits over the years as -- you
15 know, as some of them have been four or
16 five years since the, um, since they --
17 they were reviewed. So, that was helpful
18 in refreshing my memory.

19 Q. Okay. Any other documents that
20 they showed you -- that refreshed your
21 recollection apart from your affidavits?

22 A. I believe my lawyers showed me,
23 as I said before, the, um, complaints, the
24 documents going back and forth between
25 Plaintiffs and Defendants.

1 MARK CALLAHAN

2 Um, they showed me policies and
3 procedures, employee handbook.

4 That's what I recall, as of
5 right now.

6 Q. Okay. And Ms. Da Silva Vint,
7 she's not providing you legal advice in
8 connection with this proceeding, correct?

9 A. I don't believe she's providing
10 me legal advice in connection with this.

11 Q. Okay. Did you attend any
12 depositions in this matter apart from the
13 one that you are currently giving?

14 A. As I sit here right now, I
15 believe the only deposition that I attended
16 in this matter was related to -- was Bob
17 Nobley.

18 Q. Okay. Did you attend that
19 deposition in person?

20 A. Sorry, I didn't catch that.

21 Q. Yeah, sorry.

22 Did you attend that deposition
23 in person as you recall?

24 A. My recollection is that I
25 attended that -- that deposition in person.

1 MARK CALLAHAN

2 Q. The good old days when we had
3 in-person depositions.

4 A. Yep.

5 Q. Okay. And do you know, apart
6 from Mr. Nobley, do you know anyone else --
7 do you know whether anyone else has been
8 deposed in this case?

9 A. It's my understanding that
10 early on Jamie Wing, Sam Schuster, Steve
11 O'Keefe were all deposed. And then it's my
12 understanding that there are a lot of
13 depositions last week and this week. I do
14 know -- I -- I believe that Johnny Lamb was
15 deposed last week. And I am just not
16 certain as to others as to whether they've
17 been deposed or gonna be deposed in the
18 next few days.

19 Q. And how do you know Mr. Lan was
20 deposed?

21 A. Um, it's my understanding, you
22 know, that -- I understood that he was
23 deposed based on our Monday morning meeting
24 this week because he was sitting on a
25 balcony with a beach behind him, so I made

1 MARK CALLAHAN

2 the assumption that he was done and on
3 vacation.

4 Q. Is that your --

5 A. Rather than being with us.

6 Q. Do you have your ticket booked
7 for tonight?

8 A. Yeah.

9 Q. I understand.

10 Did you speak with Mr. Lan
11 about his deposition at all?

12 A. No, I have not spoken to Mr.
13 Lan about his deposition at all.

14 Q. Have you reviewed any
15 deposition transcripts in this matter that
16 is separate from the depositions you
17 attended or deposition you attended?

18 A. As I sit here right now, I have
19 not reviewed any deposition transcripts of
20 any recent depositions. My recollection is
21 that I -- you know, I guess as you said
22 when I attended, I believe I reviewed that
23 -- parts of that transcript and I believe
24 that, you know, a long time ago, I also
25 reviewed, um, parts of the depositions for

1 MARK CALLAHAN

2 Mr. O'Keefe, Schuster, and Wing.

3 Q. Okay. But no -- did you -- did
4 you receive any summaries of depositions
5 that were taken say last week in this
6 matter?

7 A. No, I have not received any
8 summaries of any depositions taken last
9 week --

10 Q. Okay.

11 A. -- in this matter.

12 Q. Great, okay.

13 Are you familiar with the
14 entity Brevet Holdings, LLC?

15 A. Yes, I am -- I am familiar with
16 the entity Brevet Holdings, LLC.

17 Q. And can you describe for me
18 what Brevet Holdings, LLC, is?

19 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 MARK CALLAHAN

2 Q. And one thing I wanted to
3 clarify before I get into some of the
4 substance with respect to Brevet: So, you
5 understand that you are sitting here today
6 in your capacity as an individual witness
7 in your personal capacity and also in a
8 30(b)(6) capacity with respect to certain
9 topics; is that right?

10 A. Yes. That is my understanding.

11 Q. Okay. And this will give us a
12 good chance to test out the Exhibit Share
13 Software Engineer, this is an easy one. If
14 you can try to pull up what we've marked as
15 exhibit --

16 MR. CYRULNIK: Let me actually
17 ask: What exhibit number are we up
18 to or do we start with 1?

19 MS. LEVINE: We start with 1
20 again.

21 MR. CYRULNIK: Okay.

22 (Whereupon, 30(b)(6) Notice of
23 Deposition was marked as Exhibit 1
24 for identification as of this date by
25 the Reporter.)

1 MARK CALLAHAN

2 Q. If you will look at your marked
3 Exhibits folder, Mr. Callahan, and see if
4 you're able to pull up what's been marked
5 as Exhibit 1.

6 MR. SOLOMON: It's on the
7 screen.

8 MR. CYRULNIK: Great.

9 Q. And just tell me whether you
10 recognize that document.

11 (Witness reviews document.)

12 Q. Have you had a chance to review
13 that?

14 A. I am still going through it.
15 This is something that you
16 would like me to read the whole thing?

17 Q. No. I'll direct your attention
18 to specific parts. First I want to ask
19 whether you recognize the document.

20 A. As I sit here right now, I
21 don't necessarily recognize the document,
22 but I can see from the title of the
23 documents, and then from only reviewing a
24 little bit of it, it looks like it's the
25 topics related to the, um, to the 30(b)(6)

1 MARK CALLAHAN

2 deposition.

3 Q. Okay. You've seen this
4 document before, right?

5 (Witness reviews document.)

6 A. As I sit here right now, I
7 don't know if I've actually seen this
8 document before.

9 Q. When you testified earlier
10 today about reviewing -- and I don't mean
11 to misstate your testimony, so tell me
12 whether I'm misremembering, but did you
13 testify earlier that you reviewed a
14 30(b)(6) Deposition Notice in preparation
15 with this deposition?

16 MR. SOLOMON: Object to the
17 question.

18 A. As I sit here right now, I
19 don't believe I -- I testified that I
20 reviewed a 30(b)(6) notice.

21 Q. Okay. Take a look at Topic 6
22 on Page 8, please.

23 (Witness complies.)

24 Q. Do you see that sentence, "The
25 manner in which Plaintiffs violated --

1 MARK CALLAHAN

2 MR. SOLOMON: He's just turning
3 to Page 8.

4 MR. CYRULNIK: Can we have it
5 up?

6 MR. SOLOMON: He's on one of
7 the instructions on Page 8.

8 Go down.

9 (Indicating.)

10 Q. Looking for Paragraph 6 on Page
11 8.

12 (Witness complies.)

13 A. "The manner by which Plaintiff
14 violated any non-compete or
15 non-solicitation provisions as alleged in,
16 among others Paragraphs 2, 63, 70 and 72 of
17 the amended counterclaims"?

18 Q. Yes. Is that one of the topics
19 that you are prepared to testify to --
20 testify with respect to today on behalf of
21 the company?

22 (Witness reviews document.)

23 A. This Topic 6 is one of the
24 items that investigated and I am prepared
25 to, um, um, prepared to respond on.

1 MARK CALLAHAN

2 Q. Okay. And would you need to
3 review, um -- if you can take a quick look
4 at 7 through 14 as well and confirm that
5 those are topics that you are prepared to
6 testify to on behalf of the company today?

7 (Witness reviews document.)

8 A. Yeah, I have a list that I --
9 of the topics.

10 Q. Okay.

11 A. I'd have to look back at my
12 list, if that's okay.

13 Q. Yeah, absolutely. I just want
14 to make sure that we are on the same page
15 in terms of which topics you are covering.
16 So, if you could take a look at that list,
17 I'm really just wanting to confirm that you
18 are prepared to testify on Topics 6 through
19 14 and 26 through 38 and whether or not
20 there are any exceptions.

21 A. I have on my list Topics 6, 7,
22 8, 9, 10, 11, 12, 13, 14. So, 6 through
23 14.

24 Q. Okay.

25 A. And then I have, I believe, 26

1 MARK CALLAHAN

2 through 31.

3 Q. Okay.

4 A. And then I have 34 through 38.

5 Q. Okay.

6 A. Is that -- is that what you
7 see?

8 Q. We are on the same page,
9 thanks.

10 You're looking at -- is it just
11 like an annotated version of this list that
12 identifies which topics were for you?

13 (Witness reviews document.)

14 A. Yes. It -- the -- I am looking
15 at a table that has 30(b)(6) topics with
16 the -- with -- it looks like it's the, um,
17 the -- I am just comparing it against
18 what's on the screen here, it looks like
19 it's the topics directly out of the, um,
20 this Notice of Deposition along with, um, a
21 list of documents that are responsive to
22 it.

23 Q. Okay. And that list was
24 provided to you by counsel?

25 A. This list was -- was, um --

1 MARK CALLAHAN

2 (Witness reviews document.)

3 A. This list was provided to me by
4 counsel at my request and -- and, um, we
5 collaborated on it.

6 Q. And can you tell me which
7 documents are designated for the topics
8 that you identified 6 through 14 and 26
9 through 38, excluding 32 and 33?

10 And if I am referring to
11 collectively to all of those topics for
12 ease of reference, I'll refer to the topics
13 on which you were designated; is that okay?

14 So, 6 through 14, 26 through 31
15 and 34 through 38, I think, matches up with
16 the list you just provided. So, I will
17 just refer to those by shorthand as the
18 topics for which you were designated today,
19 okay?

20 A. Okay.

21 Q. So, are there documents that
22 are listed out for each topic by number, or
23 is it just a group of documents for a group
24 of topics?

25 A. There are documents listed out

1 MARK CALLAHAN

2 for each of the topics, um, but not all of
3 the topics.

4 Q. Okay. Well, when we get to the
5 topics, we will talk more about that, but
6 that's helpful, thanks.

7 Are there any other notes on
8 that, um, document that you are looking at,
9 other than the 30(b)(6) topics and the
10 documents and witnesses that are being
11 designated for each?

12 A. The first couple of things you
13 said there, there's topics and then there
14 are documents, but there's not a
15 designation as to which person is
16 designated to as this is a list just of my
17 --

18 Q. I see.

19 A. -- topics.

20 Q. Got it. Okay.

21 Brevet Holdings, LLC, that's
22 owned -- what's the ownership structure of
23 that?

24 A. [REDACTED]
[REDACTED]

MARK CALLAHAN

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Q. Do you know why that split exists?

A. As I sit here right now, I don't -- I do not know why that split exists.

Q. That split has been in place ever since you were involved with Brevet, to your knowledge?

A. As I sit here right now, I don't know whether or not that split has been around since -- since the entity was created.

Q. When was the entity created?

A. As I sit here right now, I don't know when that entity was created.

Q. Do you know if it was created before or after you were a part of Brevet?

A. As I sit here right now, I believe it was created after I was part of Brevet.

Q. Do you know what the original Brevet entity was called, the first Brevet

1 MARK CALLAHAN

2 entity that was -- that was formed?

3 A. Can you -- can you please
4 clarify; are you asking the question as to
5 sort of the initial entity that, you know,
6 including all affiliates, or are you
7 talking about the first entity with Brevet
8 in its name?

9 Q. That's a fair clarification.

10 Let's start with the first
11 version of the question, the first --
12 including all of its affiliates.

13 A. I believe, as I sit here right
14 now, I believe the first entity that was
15 created was called the Franchise Capital
16 Source.

17 Q. And were you involved with that
18 entity from its -- from inception?

19 A. As I sit here right now, I
20 believe I was involved since its inception.
21 If not from its inception, then shortly
22 after its inception.

23 Q. Was it just you and Doug
24 Monticciolo, or was anyone else involved in
25 the very initial stages of that entity's

1 MARK CALLAHAN

2 formation?

3 A. As I sit here right now, my
4 recollection is that there were two other
5 people involved in the early stages of that
6 company.

7 Q. Who are those people?

8 A. As I sit here right now, I
9 believe they were [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

11 Q. Okay. Were they involved with,
12 um, the Brevet entities for a sustained
13 period of time?

14 A. As I sit here right now, my
15 recollection is -- is that they were not
16 involved in, um, the [REDACTED] [REDACTED]
[REDACTED] for -- no. I don't know what you
18 define as a sustained period of time, but
19 my recollection is that they maybe were
20 involved with it for a year or so.

21 Q. And then just you and Doug were
22 the other -- other two individuals involved
23 and you stayed on and remained involved
24 with the Brevet entities until this day,
25 correct?

1 MARK CALLAHAN

2 A. Yes. Doug and I have been, um,
3 working together on -- on various, um --
4 various businesses since that point in time
5 and prior to that time, as well.

6 Q. How did you first meet Doug?

7 A. As I sit here right now, I
8 believe the first time I met him was in a
9 job interview.

10 Q. Can you describe the
11 circumstances for me a little bit?

12 A. I -- I believe that, um -- I
13 believe that it was probably in 1995 or so,
14 um, I -- I was employed at the Chase
15 Manhattan Bank and the Chase Manhattan Bank
16 was being, um, acquired by, um, um --
17 acquired at the time and it was uncertainty
18 as to what any ongoing role I would have
19 there. So, I started interviewing for jobs
20 and one of those interviews took me to
21 Lehman Brothers, um, which is when I, um,
22 believe met with Doug in the -- in the
23 courtyard of the World Financial Center and
24 he conducted an interview there.

25 Q. He was working for Lehman

1 MARK CALLAHAN

2 Brothers at the time?

3 A. My recollection is that he was
4 working for Lehman Brothers.

5 Q. And were you hired by Lehman
6 Brothers?

7 A. Yes, I was hired subsequent to
8 that by Lehman Brothers.

9 Q. Did you work for Doug?

10 A. While I was at Lehman Brothers,
11 I had a number of bosses. My -- my
12 ultimate boss was John Hunt. John Hunt
13 headed up an industry strategies group for
14 which there were two industries; it was
15 insurance and it was banking. Doug headed
16 up the banking side of it and, um, you
17 know, a fellow by the name of David Harris
18 headed up the insurance side of it. And as
19 a junior member of that -- that overall
20 team, um -- actually, there was a third
21 part, there was a research part of it where
22 John Tierney was the head of that one, so
23 as a junior person, I essentially worked
24 for everybody above me, which was a lot of
25 people.

1 MARK CALLAHAN

2 Q. Got it.

3 And then, did there come a
4 point in time when Doug decided to leave
5 Lehman Brothers?

6 A. Sorry, I missed the beginning
7 of that question.

8 Q. Did there come a point in time
9 when Doug Monticciolo decided to leave
10 Lehman Brothers?

11 A. Yes, there came a point in time
12 where Doug left Lehman Brothers.

13 Q. He left voluntarily?

14 A. My understanding is that he
15 left voluntarily.

16 Q. And was that to start the
17 initial entity that you referenced a few
18 moments ago as the first Brevet affiliate?

19 A. No, it was not.

20 Q. Do you know what he left to do?

21 A. Doug left Brevet and joined --

22 Q. Yeah.

23 A. Sorry about that.

24 Doug left Lehman and, um, was
25 subsequently or -- or simultaneously, I

1 MARK CALLAHAN

2 don't know the timing -- was hired by, um,
3 a Deutsche entity. I believe at the time
4 it was Deutsche Morgan Grenfell. I think
5 that entity ended up somehow getting
6 eliminated. He ended up, I believe,
7 working for Deutsche Bank Securities.

8 Q. And did you go over with him to
9 Deutsche Bank or did you stay at Lehman
10 Brothers?

11 A. I recall that I stayed at
12 Lehman Brothers for a time period such that
13 I could, um, um, put or have on my resume
14 that I stayed at Lehman for at least a
15 year, so I waited for the completion of a
16 year at Lehman Brothers and then I was
17 hired by Deutsche.

18 Q. By Doug?

19 A. Doug -- Doug was certainly
20 involved in the hiring process. I don't
21 know, you know, technically who made the
22 hiring decision there.

23 Q. Got it.

24 So, Doug left Lehman Brothers
25 shortly after you joined; is that right?

1 MARK CALLAHAN

2 A. My recollection is that I
3 really don't recall -- yes, it was less
4 than a year. Um, my recollection is
5 probably more than six months, less than a
6 year, but I don't recall exactly the dates.
7 It was, um, um, I think -- you know, that
8 was 26 years ago.

9 Q. Right. Did you reach out to
10 Doug or did he reach out to you about the
11 prospect of your leaving Lehman Brothers
12 and joining Deutsche?

13 A. My recollection is that, um,
14 that I reached out to Doug.

15 Q. Okay. And he was obviously
16 receptive to that overture, correct?

17 A. Um, my recollection is that he
18 was receptive to the overture as well as
19 others. There were -- there were a lot of
20 people going from, um -- there were a lot
21 of people that went from Lehmann to
22 Deutsche at the time.

23 Q. Um-hum.

24 A. For example, one of my bosses I
25 mentioned earlier, John Tierney, also went

1 MARK CALLAHAN

2 to Deutsche around the same time.

3 Q. Got it.

4 And then, did you work directly
5 for Doug at Deutsche or was there also sort
6 of a lengthy chain of command that
7 ultimately lead to Doug being one of your
8 bosses, but not direct?

9 A. My recollection is that it --
10 at various points in time, I was either --
11 certainly it was the same sort of thing,
12 where there were -- there were -- may have
13 been fewer levels, but there were still
14 levels of people between myself and Doug.
15 And then there were other times when I
16 didn't even -- it didn't even roll up to
17 Doug as Doug moved on to a separate effort
18 than what we were originally in.

19 Q. And then, did Doug leave
20 Deutsche and start the Brevet affiliate
21 that you referenced earlier, or is there
22 another step or more in between those two
23 positions?

24 A. I -- my understanding is that
25 when -- when he left, um -- when he left

1 MARK CALLAHAN

2 Deutsche, almost said Brevet again, when he
3 left Deutsche, he started the, um, the
4 relationships and ultimately -- I don't --
5 I don't recall whether or not -- when the
6 entity was set up. If he immediately set
7 up the entity or if he developed an idea
8 first and then set up the entity.

9 Q. Okay. And how shortly -- well,
10 did he reach out to you prior to his
11 leaving Deutsche to invite you to partner
12 with him in -- in connection with forming
13 some sort of business venture that
14 ultimately resulted in Brevet?

15 A. Um, my recollection is that I,
16 um, had reached out to him. We -- the
17 group that we had started at Deutsche had
18 been -- so, Doug at some point had moved
19 from that group to head up all of
20 asset-backed securities, I believe, at
21 Deutsche. And then the gentleman that took
22 over the, um, the business that I was
23 working in ultimately made a determination
24 to eliminate that business and essentially
25 eliminating the job and had asked whether

1 MARK CALLAHAN

2 or not I wanted to work in either
3 asset-backed securities or commercial
4 mortgage-backed securities.

5 And so, at that point in time,
6 I, um, started interviewing for a number of
7 different opportunities and I approached
8 Doug about what he was doing as well.

9 Q. I see.

10 So, he was still at Lehman when
11 you had that discussion -- I'm sorry, still
12 at Deutsche when you had that discussion
13 with him?

14 A. No.

15 Q. He had already left?

16 A. He had already left.

17 Q. But he had not yet formed the
18 entity that was the first Brevet affiliate?

19 A. That, again, I do not recall
20 what the timing was with respect to setting
21 up of -- of that entity.

22 Q. Okay.

23 MR. CYRULNIK: I think we've
24 been going for a little while. Would
25 now be a good time for a short break

1 MARK CALLAHAN

2 and give the Court Reporter --

3 MR. SOLOMON: That's fine. I
4 would want to request that we have
5 keep the breaks short so we don't
6 have any issue at the end of the day.
7 We're fine if you want to take a
8 break.

9 MR. CYRULNIK: Let's go off the
10 record.

11 THE VIDEOGRAPHER: Off the
12 record at 10:27.

13 This marks the end of Media
14 Unit Number 1.

15 (Whereupon, an off-the-record
16 discussion was held.)

17 THE VIDEOGRAPHER: We are on
18 the record at 10:38.

19 This marks the beginning of
20 Media Unit Number 2.

21 Please proceed.

22 Q. Welcome back, Mr. Callahan.

23 We were talking shortly before
24 the break about some of the entities, the
25 Brevet entities, and I think we started

1 MARK CALLAHAN

2 with Brevet Holdings, LLC.

3 Do you have a role or title
4 with respect to Brevet Holdings, LLC?

5 A. It's my understanding that my
6 title at Brevet Holdings, LLC, and I
7 believe other -- the other Brevet entities
8 is managing director.

9 Q. You're a managing director.
10 How many managing directors
11 does Brevet, LLC have?

12 A. As I sit here right now, I
13 don't know.

14 Q. Do you know whether there are
15 more than two?

16 A. As I sit here right now, I
17 believe there's more than two.

18 Q. Can you tell me any other
19 managing directors that you are aware of
20 for Brevet Holdings, LLC?

21 A. Well, Brevet Holdings, LLC, I
22 believe that I am a managing director;
23 Ms. Monticciolo is a managing director,
24 Mel-Li da Silva Vint, Mark Dunschee, Abtine
25 Bazeree. I don't remember off the top of

1 MARK CALLAHAN

2 my head here.

3 Q. Okay. Do you hold any
4 interests, direct or indirect, in Brevet
5 Holdings, LLC?

6 A. I don't believe that I hold any
7 interest in Brevet Holdings, LLC.

8 Q. Are you familiar with the
9 entity Brevet Capital Management, LLC?

10 A. Yes, I am familiar with the
11 entity Brevet Capital Management, LLC.

12 Q. And what's that entity?

13 A. That entity is an LLC.

14 Q. Is the investment manager for
15 several funds?

16 A. That entity is a registered
17 investment advisor which enables it to be
18 an investment manager --

19 THE COURT REPORTER: I can't
20 hear you. I'm sorry.

21 Which is what?

22 THE WITNESS: Which enables it
23 to be an investment manager

24 Q. For which funds does it
25 currently serve as an investment manager?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 don't know the formal names of those funds
4 or even a comprehensive list of -- of which
5 entities it is the investment manager for.

6 Q. Well, can you give me the names
7 of the entities whether they are formal or
8 informal that you're aware of, sitting here
9 today for which Brevet Capital Management
10 serves as the investment manager?

11 A. I am aware that Brevet Capital
12 Management is an investment advisor for a
13 Short Duration Fund.

14 Q. One Short Duration Fund?

15 A. Excuse me?

16 Q. Was that one Short Duration
17 Fund or more than one Short Duration Fund?

18 A. For a Short Duration Fund and
19 for an intermediate duration fund.

20 Q. So, sitting here today, you are
21 aware of two funds for which Brevet Capital
22 Management serves as an investment advisor?

23 A. As I said, I am not sure how
24 many there are, but I believe that for
25 those two funds which are onshore funds, I

1 MARK CALLAHAN

2 believe that Brevet Capital Management is
3 the investment manager for those two funds.
4 And it may be investment manager for other
5 entities as well, but I don't know who --
6 what those names are at this point.

7 Q. Do you know whether it serves
8 as an investment manager for any offshore
9 funds?

10 A. As I sit here right now, I
11 don't know it's the investment manager for
12 any offshore funds.

13 Q. What does an investment manager
14 do?

15 A. As I sit here right now, that's
16 a very broad question, but the investment
17 manager is typically responsible for
18 carrying out the, um -- the duties that are
19 set forth in an investment management role.

20 Q. Does it make all the decisions
21 with respect to what investments a fund
22 invests in?

23 A. My understanding is that
24 investment managers, to the extent that an
25 investment manager -- management agreement

1 MARK CALLAHAN

2 calls for them to make all decisions, that
3 they would do that because it's in the
4 investment management agreement.

5 Q. Is it your understanding that's
6 the role that Brevet Capital Management was
7 asked to fulfill with respect to the two
8 funds that you identified a couple of
9 moments ago?

10 A. As I sit here right now, I
11 don't know what -- what limitations there
12 are on what has been delegated to the -- to
13 Brevet Capital Management, pursuant to
14 those investment management groups.

15 Q. What -- what is your role in
16 Brevet Capital Management, LLC?

17 A. I am an employee of Brevet
18 Holdings, LLC.

19 Q. I can't tell, were you done
20 with your answer?

21 A. Yes.

22 Q. I am just asking, I understand
23 that you're an employee of Brevet Holdings.
24 My question is: Do you have a role with
25 respect to Brevet Capital Management, LLC?

1 MARK CALLAHAN

2 A. With respect to Brevet Holdings
3 and Brevet Capital Management, my -- my
4 main role is that I am responsible for
5 overseeing the risk aspects of the assets
6 that Brevet Capital Management manages on
7 behalf of fund vehicles.

8 Q. Do you have a title at Brevet
9 Capital Management, LLC?

10 A. As I sit here right now, as I
11 believe I told you previously, I believe
12 I'm a managing director in all of the
13 Brevet entities.

14 Q. So, you're a managing director
15 of Brevet Capital Management, LLC, but you
16 don't know whether or not Brevet Capital
17 Management makes the investment decisions
18 for one of the two funds that you
19 identified it as being the investment
20 manager for?

21 MR. SOLOMON: Objection to the
22 question.

23 A. As I sit here right now, that's
24 not at all what I said. I believe you
25 asked, you know, relative to, you know,

1 MARK CALLAHAN

2 whether the Brevet Capital Management had
3 all the rights associated with managing
4 assets, and I just deferred you to -- to
5 the investment management agreement to
6 determine what limitations there might be
7 on the -- associated with that.

8 Q. And I appreciate that there's a
9 document that lays out the nitty gritty
10 details on those restrictions and
11 limitations.

12 My question is a more practical
13 one, practically speaking: As a managing
14 director of Brevet Capital Management, can
15 you tell me whether or not functionally
16 Brevet Capital Management is making all of
17 the investment decisions with respect to
18 the Short Duration Fund that you referenced
19 earlier?

20 A. As I sit here right now,
21 functionally, there are aspects of the
22 decision making that occur at both the
23 Brevet Capital Management and at the
24 partner entities of the funds.

25 Q. Thanks.

1 MARK CALLAHAN

2 So, can you help me understand
3 the breakdown there: When you say the
4 "partner entities," are you referring to
5 the GP entity?

6 A. Yes, that is correct.

7 Q. Can you help me understand with
8 respect to the Short Duration Fund, the
9 onshore Short Duration Fund that you
10 referenced a few minutes ago, and I'll call
11 that the Short Duration Fund, onshore Short
12 Duration Fund. Can you help me understand
13 and breakdown of responsibility between the
14 investment manager, Brevet Capital
15 Management, LLC, on the one hand, and the
16 general partner on the other?

17 A. As I sit here right now, as
18 I've said, I would refer you to the
19 investment management agreement. There are
20 a significant number of -- of -- of duties
21 in terms of day-to-day management of assets
22 that gets done at Brevet Capital
23 Management. There are times when the
24 general partner of a fund may also have to
25 be involved. That's not a decision that --

1 MARK CALLAHAN

2 that risk would make, that's a decision
3 that we would work in concert with our
4 counsel to determine when that was
5 appropriate.

6 Q. I want to make sure I
7 understand your testimony.

8 When you say that's not a
9 decision risk would make, you're referring
10 to the fact that Brevet Capital Management
11 was involved with risk-related decisions
12 for the funds that it advised?

13 Is that a fair statement?

14 A. No, I -- I'm referring to the
15 fact that, as I told you, I am responsible
16 for all of the risk function at Brevet
17 Capital Management.

18 Q. Let me go back to my prior
19 question again.

20 I'm trying to understand and,
21 again, I appreciate that there are
22 documents that you can refer me to to get
23 all the Ts and Cs with respect to these
24 question.

25 I am asking for your

1 MARK CALLAHAN

2 understanding, Mr. Callahan, your
3 understanding and with respect to any topic
4 on which you are designated as a 30(b)(6),
5 I am asking for Brevet's understanding.

6 Right now I am asking for your
7 understanding of the breakdown in
8 responsibility with respect to managing the
9 short duration onshore fund as between its
10 investment advisor, Brevet Capital
11 Management, and its general partner, Brevet
12 Short Duration Partners.

13 A. And I believe as I told you,
14 that's not something that is the focus of
15 what I work on on a day-to-day basis. I am
16 focused on the actual assets that are owned
17 by the fund vehicles, the management of
18 those assets and the -- and -- and to
19 mitigate risk associated with any -- any
20 risk associated with those assets. And
21 that is something that is done as part of
22 Brevet -- you know, as Brevet Capital
23 Management as the investment manager --

24 Q. So --

25 A. -- and there are certain

1 MARK CALLAHAN

2 decisions that are made and documents -- in
3 documenting those decisions, certain of
4 those decisions may ultimately be done or
5 be made by Brevet Capital Management and
6 others will be made by the general partner.

7 But, again, that is not
8 something when I say that risk is involved
9 with that, that's not something that I am
10 involved with in determining in going -- in
11 determining whether that decision is made
12 by which entity.

13 Q. Well, maybe it would help to
14 take a step back and you can help me
15 understand what types of decisions we are
16 talking about.

17 And we will focus on the short
18 duration -- the onshore Short Duration Fund
19 for purposes of this set of questions.

20 The onshore Short Duration
21 Fund, summarize for me what it is they do,
22 how it is that they invest funds that they
23 have and then we can talk about how that
24 relates to the various entities that we
25 were just referring to.

1 MARK CALLAHAN

2 So, walk me through what the
3 Short Duration Fund is doing with its
4 funds.

5 MR. SOLOMON: Object to the
6 question.

7 A. It's my understanding that the
8 Short Duration Fund owns assets.

9 Q. And those assets, can you --
10 can you describe the type of assets that
11 they own?

12 A. It's my understanding that the
13 Short Duration Fund has tremendous
14 flexibility on the assets that it can own.
15 So, there's a wide variety of assets.

16 Q. Can you tell me the main types
17 of assets the Short Duration Fund holds an
18 interest in?

19 A. With respect to what timing are
20 you asking that question?

21 Q. Well, let's start with now.

22 A. It's my understanding that --
23 that now the, um, majority of the Short
24 Duration Fund assets [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

1 MARK CALLAHAN

2 Q. Okay. And what's a [REDACTED] [REDACTED]
[REDACTED] [REDACTED] ?

4 A. It's my understanding that
5 those assets are related to, um, [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 Q. So, the counterparty would --
12 would it be fair to call the counterparty a
13 borrower, given the fact that you're
14 providing financing to them?

15 A. The -- depending -- it's my
16 understanding, depending on the type of
17 transaction, whether it's a factory
18 transaction or whether it's a -- a -- a
19 loan, yes. They can be characterized as a
20 borrower or they can be characterized as
21 just a counterparty.

22 Q. For ease of reference, um, I'll
23 refer to them as borrower for the next few
24 questions, okay?

25 A. Okay.

1 MARK CALLAHAN

2 Q. Okay. So, you have one or more
3 borrowers is that, um, is [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] is that right?

7 A. It's my understanding that for
8 the most part that's -- that's correct.

9 Q. Okay. And that entity, the
10 borrower, needs to -- needs financing from
11 another -- from an outside source like
12 Brevet.

13 Is that also right?

14 A. It's difficult for me to say
15 what that company needs, I'm not at that
16 company.

17 Q. Fair enough, fair enough. I'll
18 rephrase the question. That's a fair
19 point.

20 That borrower is looking to
21 borrow funds or for some financing from
22 another outside source, correct?

23 A. My understanding is that
24 company has approached Brevet regarding
25 obtaining financing.

1 MARK CALLAHAN

2 Q. And the significance of the
3 fact that that company is eligible for a
4 tax rebate or tax credit is that the
5 forthcoming tax rebate or tax credit can
6 be -- can serve as collateral for financing
7 that Brevet would extend to the borrower;
8 is that right?

9 A. It's my understanding that
10 the -- that counter-parties with a payment
11 receivable from a government entity would
12 be utilized as part of the collateral
13 package in a transaction.

14 Q. Is there anything else about
15 the fact that that borrower qualifies for a
16 tax rebate or a tax credit apart from that
17 tax rebate or tax credit serving as
18 collateral for a loan or a financing, is
19 there anything else that is significant
20 about that fact as it pertains to Brevet's
21 decision to extend financing to that type
22 of borrower?

23 MR. SOLOMON: Object to the
24 question.

25 A. Sorry. Can you -- can you

1 MARK CALLAHAN

2 repeat to me what that fact is?

3 Q. Sure. The fact that the
4 borrower qualifies for a tax rebate or a
5 tax credit?

6 MR. SOLOMON: Same objection.

7 A. So, you're asking whether or
8 not there's anything else that's -- that's
9 taken into consideration with respect to --

10 Q. Yeah. I am just trying to
11 understand the significance of the fact
12 that this borrower has qualified for a tax
13 rebate or a tax credit apart from the fact
14 that the tax rebate or tax credit for which
15 it qualified can serve as collateral for
16 Brevet's financing.

17 Is there anything else that
18 Brevet views as significant about the the
19 fact that that borrower qualified for the
20 tax rebate or tax credit?

21 A. It's my understanding that
22 there are underwriting policies,
23 underwriting, you know, approach for those
24 transactions, and the tax credit would be
25 one aspect of -- of that underwriting.

1 MARK CALLAHAN

2 Q. Okay. So, the -- in connection
3 with the financing, there are, I take it,
4 documents that are executed between the
5 borrower and the -- the Short Duration
6 Fund; is that right?

7 A. It's my understanding that
8 there are documents that are entered into.
9 However, they're not entered into by Brevet
10 Short Duration Fund.

11 Q. Okay. Who enters -- who's the
12 counterparty on the documents? Who enters
13 into the documents on the lender or
14 financier side?

15 A. It's my understanding that
16 there are various counter-parties that
17 would enter into those agreements and some
18 of which are -- are subsidiaries of Brevet
19 Holdings and others may be entities owned
20 by the Short Duration Fund.

21 Q. Who decides which Brevet entity
22 would enter into a particular transaction
23 with a borrow?

24 A. It's my understanding that the
25 entity that funds a transaction is the

1 MARK CALLAHAN

2 entity that originates such transaction.

3 Q. And what do you mean by
4 "originates" when you use that term?

5 A. In this context where I use
6 "originate" to mean that the -- the
7 counterparty, the company that -- that
8 sourced the potential borrower.

9 Q. I'll ask you the same question
10 with respect to sourcing then.

11 What do you mean by sourcing in
12 the context that you just used it?

13 A. I am just trying to think about
14 another word that you're not gonna ask me
15 about. It's -- it's the person who finds
16 -- it's the company that finds the, um, the
17 borrower.

18 Q. Okay. So, I guess this is what
19 I am struggling with: There are a bunch of
20 Brevet entities that have common
21 individuals, common employees or executives
22 that are acting on their behalf; is that --
23 is that a fair statement?

24 A. I believe that there are --
25 there -- the employees are Brevet Holdings.

1 MARK CALLAHAN

2 And those employees at Brevet Holdings also
3 have -- have some authority at other
4 entities.

5 Q. Right. So, if -- if Mark
6 Callahan sources a transaction -- sources a
7 particular deal in the way that you just
8 used sourcing, he finds a particular deal,
9 that is, a borrower approaches Mark
10 Callahan for financing and the borrower
11 qualifies, say as a borrower, with a
12 profile that -- that Brevet is interested
13 in, how does Mark Callahan decide which hat
14 he was wearing or which entity he was
15 representing when he sourced that
16 particular deal for purposes of identifying
17 the counterparty to the transaction and the
18 entity from which the fund -- the financing
19 would be extended?

20 A. Mark Callahan doesn't originate
21 transactions, doesn't originate tax
22 credits, in essence.

23 Q. Well, in my example, he does.
24 So, I -- you can view it as pure
25 coincidence that it has the same name that

1 MARK CALLAHAN

2 you do, but you can also call him John Doe
3 if that's easier for you.

4 A. It's my understanding that John
5 Doe, in your example, would actually be
6 employed by the counterparty that
7 ultimately made the financing -- ultimately
8 made the loan. So, it's the -- there are
9 people employed at an entity and that
10 entity, it finds sources, originates,
11 whatever you want to call it, transactions.
12 And then, ultimately, after diligence,
13 after underwriting, it funds -- getting --
14 getting appropriate approvals, it then
15 funds the transactions.

16 Q. It's your understanding that
17 the people working at Brevet are each
18 affiliated with -- who are sourcing
19 transactions are each affiliated with one
20 and only one Brevet entity on whose behalf
21 they are acting when they source a
22 transaction?

23 A. It's my understanding based on
24 what we're talking about, which is you're
25 asking about the tax credit financing.

1 MARK CALLAHAN

2 There are people specifically in those --
3 in those businesses and they exclusively
4 originate transaction into those entities
5 within certain geographic parameters.

6 Q. So, you're not aware of anyone
7 who's involved in sourcing that acts on
8 behalf of more than one Brevet entity; is
9 that right?

10 A. That's not correct. That's not
11 at all what I just said.

12 Q. Well, I am glad I asked.

13 Can you tell me where I went
14 wrong on that?

15 A. It is my understanding that you
16 are asking about tax credit financing.

17 Q. Well --

18 A. Based on the tax credit
19 financing, we have specific people that are
20 tasked with finding, sourcing, originating
21 transactions.

22 Those people are compensated
23 for transactions for -- compensated by
24 those entities, those transactions
25 ultimately may or may not get funded by

1 MARK CALLAHAN

2 that entity, but won't get funded
3 elsewhere.

4 Q. What was the last thing you
5 said? I didn't hear. Those transactions
6 may or may not get funded by that entity,
7 but what?

8 A. But they won't get funded
9 elsewhere. If they're not getting funded,
10 it's because they were turned down.

11 Q. Okay.

12 A. It's not that they're gonna go
13 and get funded by another entity.

14 Q. Okay. And those individuals
15 that you were just referring to, are acting
16 exclusively on behalf of one particular
17 entity at any given moment. They are not
18 employed by or affiliated with or acting on
19 behalf of multiple Brevet entities, right?

20 A. The individuals that are
21 employed in our tax credit platforms are
22 tasked with originating transactions for
23 one and only one entity.

24 Q. Have you ever originated a
25 transaction?

1 MARK CALLAHAN

2 A. I don't know what you mean by
3 originated.

4 Q. Well, what do you mean by
5 originated? I think you explained it a
6 couple of minutes ago. I meant the same
7 thing that you did, but you can explain it
8 again if you want to make sure we're on the
9 same page.

10 A. If you're asking whether or not
11 I go out and find, source, originate
12 transactions, that is not something that I
13 do. Have there been situations where as
14 part of existing transactions, there have
15 been follow-on transactions with existing
16 counter-parties. I wouldn't characterize
17 that as originated them 'cause they were
18 previously originated, but it depends on
19 your definition.

20 Q. Would you characterize what you
21 just described as sourcing a transaction or
22 you similarly wouldn't characterize that as
23 sourcing a transaction because it was
24 associated with an existing transaction?

25 A. I wouldn't characterize it as

1 MARK CALLAHAN

2 sourcing a transaction, if that transaction
3 had already been sourced.

4 Q. If a transaction leads to a --
5 to another transaction with the same
6 counterparty, you view that as one overall
7 larger transaction that was sourced by the
8 original sourcer; is that correct?

9 A. It's my understanding. It
10 depends on your definition. I -- I don't
11 -- I don't necessarily have a view as to
12 how you want to characterize it. I am just
13 explaining to you there are situations that
14 -- that follow-on transactions happen and
15 if you want to characterize them as
16 sourcing, then that's fine, but it can go
17 either way.

18 Q. That's fine. And I am not
19 trying to get you to characterize in any
20 particular way. I am just trying to make
21 sure that we're using language in a similar
22 way and I know that you were telling me
23 you're not involved in sourcing and
24 excluding from that what you just
25 described. So, I'm just trying to make

1 MARK CALLAHAN

2 sure that we're on the same page, but let
3 me make sure I got it.

4 When you talk about follow-on
5 transaction, are you referring to a
6 financing that involves multiple stages of
7 disbursements whereby, you know, you have
8 \$10 million deal that gets disbursed in
9 tranches and, you know, the second, third
10 and fourth tranche is a follow-on
11 transaction?

12 A. No.

13 Q. How would you describe the
14 second third or fourth tranche of a deal
15 that involved up to \$10 million of funding
16 not as an follow-on transaction?

17 A. I would characterize that as
18 part of the original transaction.

19 Q. Part of one transaction that
20 Brevet does.

21 A. I would characterize it
22 depending on whatever the legal documents
23 are. If the initial legal document called
24 for five "follow-on transactions," that's
25 one transaction, if the original legal

1

MARK CALLAHAN

2

document called for one transaction and

3

then there were subsequent legal

4

transactions that did four more

5

transactions, that would be a different

6

kind of follow-on, but there would be

7

different -- it depends on how you want to

8

characterize sources, I guess I'm back to

9

that.

10

Q. Got it, okay.

11

And in the example that you

12

just described, do you ever enter into

13

deals that calls for sort of a maximum

14

financing amount that is up to X million

15

dollars as opposed to a finite amount

16

that's gonna be dispensed in a -- in a

17

predetermined number of disbursements?

18

A. It is my understanding that we

19

have probably put in the term maximum

20

financing amount in -- in certain

21

transactions, but it's a -- that -- that

22

term is not really, um -- it's not what we

23

focus on. We're more focused on whether or

24

not there's a commitment amount.

25

Q. I see. And.

1 MARK CALLAHAN

2 What is a commitment amount?

3 A. My understanding that a
4 commitment amount is an amount that -- that
5 a lender has committed to fund a borrower.

6 Q. I see. And if the borrower
7 ultimately does not take the full amount of
8 the commitment amount, you would still
9 consider that transaction to be, you know,
10 labeled as to whatever the commitment
11 amount is?

12 A. I -- I don't -- I would view
13 that as being two different pieces of
14 information.

15 Q. Was the commitment amount a key
16 factor in Brevet determining what types of
17 transactions it would be interested in
18 involving itself with?

19 A. It's my understanding that the
20 commitment amount is -- is not a key
21 factor, if you're asking about size.

22 THE COURT REPORTER: If you
23 were asking about what? I didn't get
24 that.

25 THE WITNESS: Size.

1 MARK CALLAHAN

2 Q. So, commitment amount is not,
3 in your view, a factor that Brevet
4 considered in deciding whether or not a
5 particular transaction was the kind of
6 transaction Brevet would get involved in?

7 MR. SOLOMON: Objection to
8 form.

9 A. If you understand, that's not
10 what I said.

11 Q. I can assure you, I don't. I'm
12 happy for you to clarify.

13 Most of the time when I'm
14 rephrasing what you said and asking you,
15 it's not to mischaracterize, it's to make
16 sure I got it right. And if the answer is
17 no, you can go ahead and explain to me what
18 you did mean, because I genuinely
19 understood you to mean what I just asked.

20 A. So, the answer is no.

21 Q. So, the commitment amount is a
22 relevant factor that is considered by
23 Brevet in connection with deciding whether
24 or not to engage in a particular
25 transaction?

1 MARK CALLAHAN

2 A. With -- with -- if you're
3 asking whether the size of a commitment
4 amount is a relevant factor, I -- you know,
5 I -- Brevet's preference is not to commit,
6 period, because with commitment comes
7 liability.

8 So, having a larger commitment
9 is -- that's why I clarified size being the
10 key factor there. Having a larger
11 commitment brings with it more liability.

12 Q. Was it -- when Brevet enters
13 into a transaction, are you saying that it
14 doesn't necessarily need to commit to a
15 particular amount of financing that it's
16 going to be extending?

17 A. It is my understanding that
18 Brevet does a lot of transactions and in a
19 lot of them, doesn't have to commit.

20 Q. So, if it doesn't commit, how
21 does it get determined and when does it get
22 determined; when does the amount of the
23 transaction get determined?

24 A. Every transaction that Brevet
25 does is its own -- its own transaction and

1 MARK CALLAHAN

2 the amount gets determined with respect to
3 each transaction individually.

4 Q. But with respect to each
5 transaction, there comes a point in time
6 when there's an amount that Brevet is
7 committing to finance, correct?

8 A. It is my understanding that
9 that's not correct.

10 Q. Well, isn't there an amount of
11 money specified -- an amount of financing
12 specified in each of the deal docs?

13 A. It is my understanding that not
14 all deal documents have a specified amount.
15 Some of them have a specified methodology.

16 Q. Can you give me an example what
17 you mean by a "specified methodology" as
18 opposed to specified amount?

19 A. Specified amount would be, this
20 is the \$100 loan. A specified methodology
21 would be, we will purchase your finance
22 assets that look like A and give you a --
23 you know, an X percent advance against
24 those.

25 Q. Okay. So, it describes the

1 MARK CALLAHAN

2 types of assets that they're -- that Brevet
3 is purchasing and is financing based on a
4 percentage of the value of those assets?

5 A. It's my understanding that
6 in -- in situations, yes, whether it's
7 purchasing or financing, whatever you want
8 to call it, there are situations where
9 those advances or purchase prices are
10 calculated based on formula.

11 Q. Is there any significance to
12 whether you characterize the role that you
13 described earlier with respect to a -- that
14 you would play with respect to a follow-up
15 transaction, whether you would characterize
16 that as sourcing or not; are there any
17 financial consequences to that with respect
18 to compensation or otherwise?

19 A. To whom are you talking about
20 compensation?

21 Q. Well, I -- I'm -- I'm returning
22 to the exchange that you and I had about
23 five minutes ago when you told me that you
24 don't source transactions, although there
25 may have been sometimes that you were

1 MARK CALLAHAN

2 involved in getting a follow-on transaction
3 put in place.

4 Do you remember that general
5 exchange?

6 A. I believe so.

7 Q. And so, my question to you is
8 just, I want to make sure I am not missing
9 the significance of the characterization.

10 Is it -- would it make a
11 difference whether or not one would
12 characterize the role that you played in
13 the follow-on transaction as origination or
14 sourcing versus not characterizing as
15 origination or sourcing?

16 A. I don't believe it makes any
17 difference, which is why I was happy for
18 you to call it either way.

19 Q. Okay. I just wanted to make
20 sure.

21 So, you don't get a percentage
22 of the transaction that you tech -- that
23 you are characterized as having sourced at
24 Brevet; is that right?

25 A. That is correct. That is --

1 MARK CALLAHAN

2 that is a, um, getting -- getting
3 compensated for sourcing transactions, you
4 know, I guess you're referring to as a
5 commission basis, it would be for employees
6 of -- related to the -- to an IRA, that
7 would be in direct conflict to the SEC.

8 Q. Got it.

9 So, you're saying Brevet has a
10 strict policy against paying what you just
11 described as commissions for sourcing or
12 originating a transaction, a financing
13 transaction?

14 A. It is my understanding that
15 Brevet Holdings doesn't pay any -- doesn't
16 pay employees' commissions on what they
17 originate.

18 Q. Doesn't play -- doesn't pay
19 non-employees commissions based on what
20 they originate or finder's fees or anything
21 like that?

22 A. I'm not -- as I sit here right
23 now, I'm not aware of any -- of any third
24 parties that are getting paid to originate
25 transactions for a Short Duration Fund.

1 MARK CALLAHAN

2 Q. That I understand. My question
3 was just slightly different: Does Brevet
4 have a policy against paying a third-party
5 a finders fee or an origination percentage?

6 A. As I sit here right now, I
7 would imagine that there's a -- there's
8 likely something that states that, given
9 the fact that the, um, payment of --
10 payment of that, especially without
11 disclosing to the SEC would jeopardize our
12 RA status.

13 Q. Okay. The only thing I think I
14 am missing the picture that you were
15 painting for me with respect to the Short
16 Duration Fund, the onshore Short Duration
17 Fund and what it does is if the originator
18 was, say, employed by a different Brevet
19 entity, called it entity X, and I believe
20 you testified earlier that the originator's
21 employer is typically the entity that would
22 extend the financing to the counterparty.

23 Did I get that right?

24 A. It is my understanding that
25 there are subsidiaries of -- of Brevet

1 MARK CALLAHAN

2 Holdings as well as subsidiaries of the
3 Short Duration Fund that have employees
4 that source transactions and those
5 subsidiaries originate loans.

6 Q. If a subsidiary of Brevet
7 Capital -- sorry. The second entity that
8 you said has subsidiaries was which entity?
9 Not the Short Duration Fund. What was it?

10 A. Brevet Holdings.

11 Q. If a subsidiary of Brevet
12 Holdings sourced a transaction, would that
13 transaction have anything to do with the
14 Short Duration Fund, the onshore Short
15 Duration Fund?

16 A. It could.

17 Q. What was the relationship
18 between Brevet Holdings and the onshore
19 Short Duration Fund?

20 A. I -- I didn't -- I didn't -- I
21 said it could be related. The transaction
22 that gets originated could be related to
23 the Short Duration Fund. I didn't say that
24 Brevet Holdings has a relationship with the
25 Short Duration Fund, I thought we were

1 MARK CALLAHAN

2 talking about the asset that gets
3 originated.

4 Q. No, we were. You got that
5 right. I was just asking you a follow-up
6 question.

7 Is there a relationship between
8 Brevet Holdings and the Short Duration
9 Fund?

10 A. My understanding is that Brevet
11 Holdings is a parent to Brevet Capital
12 Management which is the investment manager
13 to the Short Duration Fund.

14 Q. So, is it your understanding
15 that there are instances in which Brevet
16 Holdings or one of its subsidiaries
17 originates a transaction in the way that
18 you described previously and, yet, that
19 transaction, that financing, is extended by
20 the Short Duration Fund?

21 A. I -- I would -- um, it's my
22 understanding that -- I -- as I sit here
23 right now, I've changed the way you asked
24 that question, whether or not that Short
25 Duration Fund extends. We talked about

1 MARK CALLAHAN

2 earlier the Short Duration Fund assets,
3 it's more likely the Short Duration Fund
4 purchases those assets rather than extend
5 the funding.

6 Q. I see, that's a helpful
7 clarification. I want to make sure I
8 understand what you're saying, although I
9 think I do.

10 So, the Short Duration Fund
11 would purchase the asset from the entity
12 that extended the funding?

13 A. It's my understanding that
14 that's -- that is sometimes how it happens.

15 Q. I see. And so, it would -- the
16 Short Duration Fund purchases assets from
17 other Brevet entities, correct?

18 A. It's my understanding that the
19 Short Duration Fund purchases assets from,
20 um, related parties to Brevet, yes.

21 Q. And is it your understanding
22 that the Short Duration Fund sometimes
23 extends the financing itself, as well?

24 A. It's my understanding that the
25 Short Duration Fund does -- does directly

1 MARK CALLAHAN

2 extend the financing, as well.

3 Q. And would the question of
4 whether or not the funding is extended
5 directly by the Short Duration Fund as
6 opposed to being extended by another Brevet
7 entity, is that determined by whether or
8 not originator of the transaction was an
9 employee who was working on behalf of the
10 Short Duration Fund in sourcing the loan
11 versus an employee of one of the other
12 Brevet entities that therefore ended up
13 sourcing the transaction?

14 A. It's my understanding that --
15 that for subsidiaries -- a subsidiary of
16 the Short Duration Fund that originates the
17 transaction and then funds that transaction
18 so it's extended within the Short Duration
19 Fund, you know, that's done, we talked
20 about earlier, right, that's done -- that
21 phase related to the counter-parties that
22 had bound sourced, originated a
23 transaction.

24 Q. And there are employees of
25 subsidiaries of a Short Duration Fund who

1 MARK CALLAHAN

2 are charged with origination and sourcing,
3 looking for deals?

4 A. It's my understanding there's
5 an entity that's a subsidiary of the Short
6 Duration Fund that originates. I am -- I
7 don't know -- as I sit here right now,
8 whether there are employees of that entity
9 or how that's done.

10 Q. If it didn't -- if that entity
11 didn't have employees, how would the entity
12 go about sourcing the transaction?

13 A. As I sit here right now,
14 companies without employees can enter into
15 service agreements, but I'm not sure what's
16 the situation of that entity.

17 Q. Is it your understanding that
18 one or more subsidiaries of the Short
19 Duration Fund has a servicing agreement
20 with another Brevet -- one or more Brevet
21 entities?

22 A. As I sit here right now, that's
23 not what I said and that's not my
24 understanding.

25 Q. Okay. So, you are not aware of

1 MARK CALLAHAN

2 any service agreement that a subsidiary of
3 the Short Duration Fund has with another
4 Brevet entity?

5 A. As I sit here right now, I am
6 not aware of any such agreement.

7 Q. So, absent a Service Agreement
8 another Brevet entity and absent having its
9 own employees who are charged with sourcing
10 transactions, how would a subsidiary of a
11 Short Duration Fund originate a
12 transaction?

13 A. As I sit here right now, I -- I
14 will repeat that it can be a service
15 agreement. I did not say it was a service
16 agreement with a Brevet entity.

17 In general, companies without
18 employees can operate through service
19 agreements engaging with other
20 counter-parties.

21 Q. So, is a subsidiary of a Short
22 Duration Fund, to your knowledge, does it
23 have a service agreement in place with a
24 non-Brevet affiliated entity for purposes
25 of identifying or sourcing transactions?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 don't know.

4 Q. Are you aware of whether or not
5 any Brevet affiliated entity ever had a
6 service agreement in place with an outside
7 entity, a non-Brevet entity for purposes of
8 sourcing a transaction?

9 A. Can you repeat that? I'm
10 trying to see -- are you asking about --

11 Q. I am asking whether you are
12 aware of -- to your knowledge, has any
13 Brevet entity ever used -- entered into a
14 service agreement with an outside party, a
15 non-Brevet affiliate for purposes of using
16 that outside party or its employees to
17 source or originate a transaction?

18 A. As I sit here right now, I
19 can't think of any.

20 Q. Okay. Short duration -- Brevet
21 Short Duration Partners, LLC is the general
22 partner of the onshore Brevet Short
23 Duration Fund; is that right?

24 A. As I sit here right now, I
25 believe the Brevet Short Duration Partners,

1 MARK CALLAHAN

2 LLC is the general partner of the onshore
3 funding that we've been talking about.

4 THE COURT REPORTER: Onshore
5 funding? I didn't hear the last
6 part, onshore funding what?

7 THE WITNESS: That we've
8 talking about.

9 Q. And Brevet Short Duration
10 Holdings, LLC, is that the managing member
11 of Brevet Short Duration Partners?

12 A. As I sit here right now, I
13 believe that's the case.

14 Q. And do you hold an interest in
15 both of those entities, Brevet Short
16 Duration Holdings and Brevet Short Duration
17 Partners?

18 A. As I sit here right now, I
19 believe I have an interest in both of those
20 entities.

21 Q. Do you have any interest in
22 Brevet Short Duration Funds, the onshore
23 fund itself?

24 A. The -- by interest, if you're
25 -- if you're asking whether or not, um, I

1 MARK CALLAHAN

2 have any money invested in that fund
3 through -- through the general partner and
4 -- and its managing member, I have an
5 interest in, um, in the short duration
6 onshore fund. It's an investment.

7 Q. Meaning your direct interest is
8 in either holdings or part -- partners or
9 both, but that interest in one or both of
10 those in your view gives you an interest in
11 the fund, the onshore fund?

12 Did I get that right?

13 A. I believe that's mostly right.
14 It's not the -- it's not the existence of
15 those entities that creates the interest,
16 it's the cash that gets invested into the
17 fund that I view as being the -- the -- the
18 interest, right, besides being -- besides
19 being the general partner there's also cash
20 invested into fund.

21 Q. I see. So, separate and apart
22 from the cash invested, do you view
23 yourself as having an interest in the Short
24 Duration Fund through the general partner
25 relationship that your entity, Brevet Short

1 MARK CALLAHAN

2 Duration Partners, has with Brevet Short
3 Duration Fund?

4 A. If you're defining as
5 relationship being ownership in an entity
6 that is the general partner of another
7 entity, then, yes, that's what it is.

8 Q. Okay. Is it your understanding
9 that you owe a fiduciary duty to Brevet?

10 A. Yes.

11 Q. Is it your understanding that
12 you owe fiduciary duties to your partners
13 at, say, the Brevet Short Duration Partners
14 entity?

15 A. Yes.

16 Q. And what is your understanding
17 of what it means to owe fiduciary duties to
18 your partners?

19 A. And by partners, you're
20 referring to members?

21 Q. Your co-members.

22 A. I -- I -- I view fiduciary duty
23 in layman's terms to be -- to be ethical,
24 honest, follow -- follow the documents,
25 don't be deceitful.

1 MARK CALLAHAN

2 Q. Okay.

3 A. Just pretty -- pretty basic
4 from -- from a layman non-lawyer is how I
5 look at it. Doing the right thing.

6 Q. Great. And would you agree
7 with me that in 2016 you owed a fiduciary
8 duty to Paul Iacovacci?

9 A. When in 2016 are you talking
10 about?

11 Q. Well, that's a fair question.

12 Can you break it down for me?
13 Do you think you owed a fiduciary duties up
14 to a certain point and then you ceased
15 owing fiduciary duties to Mr. Iacovacci?

16 A. My understanding is that my
17 fiduciary duty is throughout is not just
18 Mr. Iacovacci, it's all members, investors,
19 and that any fiduciary duty would have
20 terminated with Mr. Iacovacci's termination
21 in October of 2016.

22 Q. And I appreciate that you may
23 owe multiple fiduciary duties to multiple
24 parties. I'm focusing, for obvious
25 reasons, for purposes of this question at

1 MARK CALLAHAN

2 least, on the ones that you owed

3 Mr. Iacovacci.

4 Was it your understanding in,
5 let's say, January of 2016, that you owed
6 fiduciary duties to Mr. Iacovacci?

7 A. As I sit here right now,
8 it's -- it's my understanding that -- that
9 all the members would have fiduciary duties
10 to each other at that point in time.

11 Q. So, yes?

12 A. All members would have
13 fiduciary duties to each other, so, me to
14 Doug to John to Paul, you know, vice versa.

15 Q. Great. And what about as of
16 February of 2016, same answer? Would you
17 view yourself as owing fiduciary duties to
18 Paul Iacovacci in February of 2016?

19 A. I would view that fiduciary
20 duty, the same answer as before, with
21 fiduciaries to all investors as well as
22 all members to extend through January
23 through -- actually. Wait, no. All
24 investors, all members, to extend
25 throughout time. It just so happens that

1 MARK CALLAHAN

2 in October, Paul ceased to be a member.

3 Q. All right. So, just to
4 short-circuit it: You would agree with me
5 that in your view you owed fiduciary duties
6 to Paul Iacovacci up through at least the
7 beginning of October of 2016; is that
8 right?

9 A. I agree, fiduciary duties were
10 needed to be followed by all members at all
11 times.

12 Q. As I understand, I am again
13 asking you about one particular fiduciary
14 duty towards one particular individual, if
15 you can focus on that one just for purposes
16 of my question, I think it will go a little
17 more efficiently.

18 But would you agree with me at
19 least through October 1st of 2016, it was
20 your view that you owed fiduciary duties
21 Paul Iacovacci?

22 A. As I sit here right now? I --
23 I -- I would say that the -- potentially be
24 a fiduciary duty, I'm not sure -- I am not
25 sure the definitive definition of what

1 MARK CALLAHAN

2 fiduciary duty is to be able to tell you
3 when or if -- when that fiduciary duty
4 ends.

5 Q. I want to make sure I
6 understand your testimony: Mr. Iacovacci
7 told you that he was gonna retire from the
8 fund in January of 2016, correct?

9 A. It's my understanding that
10 that's not correct.

11 Q. Mr. Iacovacci didn't tell you
12 he was retiring from Brevet in January of
13 2016?

14 A. It's my understanding that, you
15 know, and you've now -- you've now
16 flip-flopped between two things, right?
17 You're saying -- you first said he was
18 retiring from the fund and now you're said
19 he's retiring from Brevet. It's my
20 understanding that Paul was incapacitated
21 and physically unable to work and was --
22 wanted to talk about potentially retiring.
23 There was no definitive retirement in --
24 whatever date it says.

25 Q. We'll get back to that, but

1 MARK CALLAHAN

2 that's fine.

3 Is it your view that somebody
4 who was incapacitated but had not retired
5 from --

6 MR. CYRULNIK: Well, let me
7 just withdraw that and start again.

8 Q. It was your view that in 2016,
9 prior to October, Mr. Iacovacci was someone
10 who was incapacitated, but had not yet
11 withdrawn from Brevet?

12 A. It was my understanding that
13 Paul had said he was incapacitated and it
14 was my understanding that he had not
15 withdrawn from Brevet Short Duration
16 Partners or Brevet Short Duration Holdings.

17 Q. Until when?

18 A. I -- to my understanding that
19 there is no when.

20 Q. What do you mean by "there is
21 no when?"

22 A. I don't have an understanding
23 as to first when he was no longer
24 incapacitated or whether he was ever
25 incapacitated, and I don't believe that he

1 MARK CALLAHAN

2 ever withdrew from Brevet Short Duration
3 Partners or Short Duration Holdings.

4 Q. Okay. Do you doubt that he was
5 incapacitated?

6 A. As I sit here right now, I have
7 no reason to believe one way or the other.

8 Q. Well, if he told you he was
9 incapacitated, you didn't have any basis
10 for disputing that, right?

11 A. As I sit here right now, I
12 don't have a basis to dispute that, except
13 for the fact that he hasn't been the most
14 truthful person.

15 Q. Well, so, sitting here today,
16 do you doubt that Mr. Iacovacci was
17 severely medically challenged during the
18 2015, 2016 period to the point of
19 incapacitated in that capacity?

20 A. As I sit here right now, I
21 don't believe he was incapacitated in 2015,
22 if you're talking about the full year.

23 Q. I'm not, I am saying at any
24 point in 2015.

25 A. Excuse me?

1 MARK CALLAHAN

2 Q. To clarify, I don't -- I'm not
3 asking you whether you thought he was
4 incapacitated for the entire year.

5 I'm asking you whether or not,
6 sitting here today, it is your testimony
7 under oath that you doubt that
8 Mr. Iacovacci was incapacitated towards the
9 end of 2015 and the beginning of 2016?

10 A. And no, that's not at all what
11 I said. I don't -- I don't doubt, I just
12 have no reason -- you're asking me whether
13 or not I have a view as to whether he was
14 or wasn't. I don't have a view.

15 Q. Okay. That's -- that's fine.

16 And you said it's your view
17 that -- your understanding that
18 Mr. Iacovacci never withdrew from being a
19 member of either holdings or partners?

20 Did I get that right?

21 A. It's my understanding that
22 Mr. Iacovacci never formally withdrew from
23 either Brevet Short Duration Partners, LLC,
24 or Brevet Short Duration Holdings, LLC.

25 Q. That's what I want to really

1 MARK CALLAHAN

2 draw down on.

3 What do you mean by "formally
4 withdrew" as distinguished by withdrawing?

5 A. It's my understanding from
6 counsel that the withdrawal of -- from
7 those entities would take place in
8 conjunction with a Separation Agreement.

9 Q. I understand. So, when you
10 referred to his not having formally
11 withdrawn from either of those entities,
12 you're referring to the fact that it is
13 your understanding that he never executed a
14 Separation Agreement with either of those
15 entities?

16 A. It is my understanding that the
17 withdrawal from those entities was gonna be
18 part of the Separation Agreement, but it's
19 not the, you know, it didn't have to be a
20 part of the Separation Agreement.

21 Q. What do you mean by that?

22 A. It's my understanding that the
23 -- the withdrawal of -- from the entities
24 could have occurred without the -- without
25 the need for a Separation Agreement.

1 MARK CALLAHAN

2 Q. Oh, okay.

3 Well, that -- that's different
4 from what I understood previously, so I'm
5 glad I asked the follow-up question.

6 So, you understood that a
7 member, including Mr. Iacovacci, could
8 withdraw from Partners, Holdings or both
9 without executing a Separation Agreement,
10 right?

11 A. It was my understanding that
12 pursuant to those LLC agreements, that one
13 could withdraw so long as they followed
14 that agreement.

15 Q. What do you mean by "so long as
16 they followed that agreement?"

17 A. It's my understanding that it's
18 set forth in the LLC agreement how one
19 withdraws from the entity.

20 Q. All right. I am going to --

21 MR. CYRULNIK: We're gonna post
22 one of the LLC agreements there so
23 that maybe you can help me understand
24 what you're referring to. I think I
25 do know, but let's post the -- the,

1 MARK CALLAHAN

2 um, the 2009, January 21st Partners
3 Agreement to Exhibit Share, and that
4 will be marked -- that's gonna be
5 marked, Mr. Callahan, there's a
6 couple of other exhibits there that
7 we're gonna either get to or skip so
8 we can move things along.

9 But Exhibit 5 is gonna be the
10 LLC Agreement and I'll let you know
11 when it's posted so I can save you
12 the -- you or your counsel the finger
13 clicking associated with knowing when
14 -- when the -- when the process has
15 been completed.

16 MS. LEVINE: One minute
17 Partners, you said?

18 MR. CYRULNIK: Yeah. We are
19 doing Partners.

20 (Whereupon, Partners, LLC
21 Agreement was marked as Exhibit 5 for
22 identification as of this date by the
23 Reporter.)

24 MR. CYRULNIK: Okay, that
25 should be up now. And Exhibit 5 is

1 MARK CALLAHAN

2 the limit --

3 You can go back on mute. I
4 think we will be better off.

5 Q. Exhibit 5, Mr. Callahan, is the
6 Limited Liability Company agreement of
7 Brevet Capital Partners, III, LLC.

8 Do you recognize this document?
9 And I will ask you --

10 MR. CYRULNIK: Yeah, sorry. Go
11 ahead.

12 MR. SOLOMON: It's on the
13 screen.

14 MR. CYRULNIK: Okay.

15 Q. Mr. Callahan, you generally
16 recognize the LLC Agreement for Partners?

17 A. I generally recognize this
18 document.

19 Q. And can you direct me to the
20 provision or provisions to which you were
21 referring to a couple of moments ago when
22 you said it was your understanding that a
23 member could withdraw provided they
24 followed the LLC agreement?

25 A. Would you like me to read the

1 MARK CALLAHAN

2 whole document or --

3 Q. No, let me ask you this:

4 Do you know what you were
5 referring to, what provision you were
6 referring to, when you referenced the LLC
7 agreement, a few moments ago?

8 A. It's my understanding that it's
9 in here, but I don't know where it's in
10 clear.

11 Q. Let me direct your attention to
12 Section 7.1 and you'll tell me whether or
13 not that's what you had in mind. That can
14 be found on Page 9 of the document.

15 (Witness reviews document.)

16 A. Sorry 7.?

17 Q. 7.1.

18 A. Okay.

19 Q. Is that the provision that you
20 had in mind when you testified a couple of
21 minutes about the withdrawal terms?

22 (Witness reviews document.)

23 A. And if you're referring to
24 7.1A, my understanding that that would be
25 -- I haven't -- I haven't read the rest of

1 MARK CALLAHAN

2 this document, but 7.1A would be that
3 topic.

4 Q. Okay. And so, it was your
5 understanding and it is your -- remains
6 your understanding that a member, including
7 Paul Iacovacci, was permitted to
8 voluntarily withdraw from the company at
9 any time provided that he gave you 180 days
10 prior written notice of his intention to
11 withdraw, correct?

12 A. It's my understanding that 7.1A
13 --

14 THE COURT REPORTER: You have
15 to speak up, sir. Section 7.1A says
16 what?

17 A. Says that a member may
18 voluntarily withdraw from the company at
19 any time provided that the member provide
20 180 days prior written notice to the
21 company of such member's intention to
22 withdraw.

23 Q. And is it your testimony --

24 MR. CYRULNIK: Well, withdrawn.

25 Q. And the member need not execute

1 MARK CALLAHAN

2 any Separation Agreement in order to effect
3 the withdrawal; is that correct?

4 A. It is my understanding, based
5 on this Section 7.1A, that there is no
6 reference to a Separation Agreement.
7 However, the parties were negotiating a
8 Separation Agreement with -- with
9 withdrawal notices as part of the
10 Separation Agreement.

11 Q. Just answer my question.

12 So, you would agree with me
13 that there's no requirement that a member
14 execute a Separation Agreement in order
15 to effect the withdrawal from the company,
16 correct?

17 A. It is my understanding subject
18 to the caveat that I just gave you about
19 the Separation Agreements, that's correct.

20 Q. That is why I'm asking the
21 question the way I am asking it, I don't
22 want any caveats in the answer. I'm asking
23 you whether or not it is your understanding
24 that a member could withdraw from the
25 company without executing a Separation

1 MARK CALLAHAN

2 Agreement?

3 MR. SOLOMON: I object to the
4 question.

5 A. I'm not sure I have anything
6 further. I think I've answered that
7 question.

8 Q. Is the answer yes?

9 A. Yes, pursuant Section 7.1A, a
10 member may withdraw voluntarily at any time
11 providing that the member provides 180 days
12 prior notice to the company of such
13 member's intention to withdraw and with the
14 caveat that that's why the withdrawal
15 notices were included in the Separation
16 Agreement.

17 Q. Okay. So, if we've established
18 that Mr. Iacovacci as a member could
19 voluntarily withdraw from the company at
20 any time without executing a Separation
21 Agreement, I'd like to turn to your prior
22 answer to one of my questions.

23 I believe you said that
24 Mr. Iacovacci never formally withdrew.

25 Do you recall giving that

1 MARK CALLAHAN

2 testimony?

3 A. I recall that.

4 Q. And when I asked you, and I am
5 not trying to mischaracterize your
6 testimony, but I am pretty sure I heard you
7 correctly, when I asked you what you meant
8 by formally withdrawing, I believe you then
9 referenced the Separation Agreement.

10 Do you recall doing that?

11 MR. SOLOMON: Objection to the
12 form.

13 A. I recall referencing the
14 Separation Agreement.

15 Q. And my question is with the
16 understanding that the Separation Agreement
17 need not be executed in order to effect a
18 withdrawal from the company pursuant to its
19 LLC agreement.

20 My question to you is: Apart
21 from executing a Separation Agreement, did
22 you have anything else in mind when you
23 said Mr. Iacovacci didn't formally withdraw
24 from Brevet?

25 A. With respect to the Separation

1 MARK CALLAHAN

2 Agreement my understanding is that
3 Mr. Iacovacci never executed the withdrawal
4 notices.

5 Q. When you say "executed the
6 withdrawal notices," are you thinking of a
7 particular form withdrawal notice that
8 needs to be sent to Brevet in order to
9 withdraw from the company?

10 A. It's my understanding that it's
11 is the withdrawal notices that had been
12 negotiated between our counsel and Paul's
13 counsel.

14 Q. So, it's your understand that
15 even if a member tells you that they intend
16 to withdraw and does so in writing, that
17 unless they execute some formal withdrawal
18 notice that was attached to a draft
19 Separation Agreement, that member has not
20 effected a withdrawal pursuant Section
21 7.1A.

22 Is that -- is that a fair -- is
23 that a fair characterization in your view,
24 Mr. Callahan?

25 MR. SOLOMON: I object to the

1 MARK CALLAHAN

2 question.

3 A. It's my understanding if you're
4 asking the hypothetical, that may be the
5 case. But in this case, if you're asking
6 about Mr. Iacovacci -- in the hypothetical
7 yes, if somebody had actually done that,
8 had actually, um, provided written notice
9 to withdraw, then in the hypothetical, I
10 would agree with you.

11 Q. Okay. And so, turning to
12 Mr. Iacovacci, let me just ask you: Is it
13 your contention that Mr. Iacovacci did not
14 provide written notice that he was
15 intending to withdraw from the company in
16 January of 2016?

17 A. It's my recollection and it's
18 my understanding that -- that Mr. Iacovacci
19 never provided notice about a withdrawal
20 from any company.

21 Q. Okay. Well, we'll get to the
22 documents a little later, but I appreciate
23 you clarifying your position.

24 MR. CYRULNIK: I think we've
25 been going a little while and, again,

1 MARK CALLAHAN

2 I want to give both you and your
3 counsel and most importantly the
4 court reporter a quick opportunity to
5 use the restroom or stretch your
6 legs. Why don't we take six or seven
7 minutes and come back at noon, if
8 that works for you, Mr. Callahan.

9 THE WITNESS: Yes

10 THE VIDEOGRAPHER: Off the
11 record at 11:52 and this marks the
12 end of Media Unit Number 2.

13 (Whereupon, a short recess was
14 taken.)

15 THE VIDEOGRAPHER: On the
16 record at 12:02, marking the
17 beginning of Media Unit Number 3.

18 Thank you.

19 Q. Welcome back, Mr. Callahan.

20 We were talking before the
21 break about whether or not Mr. Iacovacci
22 had provided notice about his intent to
23 withdraw from Brevet in January of 2016.

24 Do you recall that general
25 subject matter?

1 MARK CALLAHAN

2 A. I recall the general subject
3 matter.

4 Q. Mr. Iacovacci spoke with you
5 directly separate and apart from any
6 written communications about his intent to
7 withdraw from the company in January of
8 2016, correct?

9 MR. SOLOMON: I object to the
10 question.

11 A. At this time I don't recall any
12 conversation where he discussed withdrawing
13 from any company.

14 Q. You don't recall having any
15 conversations with Mr. Iacovacci about his
16 intent to withdraw from Brevet?

17 A. That's correct.

18 Q. Do you recall any written
19 communications about that subject matter?

20 A. As I sit here right now, I
21 don't recall any written communications
22 about withdrawal from any of the company.

23 Q. Would you -- is it your
24 testimony --

25 MR. CYRULNIK: Withdrawn.

1 MARK CALLAHAN

2 Q. Mr. Callahan, you had no doubt
3 by the end of January, 2016 that
4 Mr. Iacovacci had no intention of
5 continuing to work at Brevet; is that
6 correct?

7 A. As I sit here right now, I
8 don't -- I don't know what Mr. Iacovacci's
9 intention was.

10 Q. Well, I'm asking you something
11 slightly different: I'm asking you about
12 your understanding, your mindset.

13 You're telling us -- is it --
14 would you agree that as of the end of
15 January, 2016, you clearly understood that
16 Mr. Iacovacci intended to retire from
17 Brevet?

18 A. As I sit here right now, I
19 recall now you have switched from talking
20 about withdrawal to retire, that he had
21 expressed reservations about his ability to
22 ever work again and wanted to talk about
23 the potential for retiring.

24 Q. Can you explain to me your view
25 as to the difference between retiring from

1 MARK CALLAHAN

2 Brevet and withdrawing from Brevet?

3 A. It's my understanding that when
4 somebody talks about withdraw -- when
5 somebody talks about retiring, they're
6 talking about retiring from their employer,
7 whereas withdrawing from a membership and
8 an interest in an LLC is separate.

9 Q. So, it's your understanding
10 that notice of intent to retire from Brevet
11 refers only to ceasing to work in the
12 capacity of an employee, but is entirely
13 unrelated from withdrawing from the
14 entities in which that individual served as
15 a member?

16 MR. SOLOMON: Object to the
17 question.

18 A. It's difficult for me to answer
19 that question because it's based on the
20 premise that there was a notice of intent
21 to retire.

22 Q. Yeah. And I don't mean to
23 imbed into the question any such premise.
24 So, let's go back to talking
25 about this divorce from any particular fact

1 MARK CALLAHAN

2 for the moment.

3 I'm just -- I want to
4 understand your view as to, you know, some
5 of the terms that we're talking about,
6 because if I understood you correctly just
7 a couple of minutes ago, you drew a
8 distinction between retiring and
9 withdrawing from the company.

10 Did I understand you correctly?

11 MR. SOLOMON: I object to the
12 question. It misstates the
13 testimony.

14 A. It's my understanding that you
15 can't use company in that, you're dealing
16 with separate corporate entities.

17 So, retirement with respect to
18 employment at Brevet Holdings would be
19 separate and distinct from withdrawing from
20 a membership interest in an LLC.

21 Q. So, is it your understanding
22 that you can retire from a company that
23 employs you, but you can't retire from a
24 company in which you are a member?

25 Is that what you're testifying

1 MARK CALLAHAN

2 to?

3 A. That is not what I'm testifying
4 to.

5 Q. Do you disagree with what I
6 just said; that one can retire from a
7 company that employs them, but cannot
8 retire from a company in which they are
9 serving as a member?

10 A. As long as one follows --
11 follows the procedures, so long as the
12 documents allow for it, one can do that.

13 Q. Okay. And the procedures
14 you're referring to are the procedures that
15 we looked at in Section 7.1A, for example,
16 of the Partners LLC Agreement as it
17 pertains to withdrawing from Partners?

18 A. That would be some of them.

19 Q. Are there any --

20 A. That does not encompass his --
21 anything related to Brevet Holdings to
22 Brevet Holdings where -- right.

23 Q. Meaning, in order to withdraw
24 from -- what -- what -- what do you mean by
25 that would not encompass anything related

1 MARK CALLAHAN

2 to Brevet Holdings?

3 A. Brevet Holdings is not a party
4 to the document you referenced.

5 Q. So, Brevet Holdings is not a
6 party to the Partners LLC Agreement; is
7 that what you mean?

8 A. That's correct.

9 Q. Okay. So, apart from the fact
10 that Brevet Holdings would have its own
11 section identifying whatever requirements
12 there are for withdrawal or retirement, did
13 you have anything else in mind when you
14 clarified that -- when you -- when you --
15 when you made the clarification that you
16 made a couple minutes ago?

17 MR. SOLOMON: Object to the
18 question.

19 A. As I sit here right now, I
20 don't recall anything else. I was just
21 highlighting the fact that when you're
22 talking about entities outside of the
23 entities in the -- in the LLC agreement,
24 Section 7.1 would have nothing to do with
25 those entities.

1 MARK CALLAHAN

2 Q. Let's take a look at, um, the
3 next exhibit, which has been marked Exhibit
4 6.

5 (Whereupon, calender entry for
6 January 6, 2016 was marked as Exhibit
7 6 for identification as of this date
8 by the Reporter.)

9 (Witness complies.)

10 Q. Tell me when you have that
11 pulled up, please.

12 MR. SOLOMON: Not yet. We are
13 not seeing 6.

14 (Witness reviews document.)

15 MR. SOLOMON: 6 is on the
16 screen.

17 MR. CYRULNIK: Great.

18 Q. Mr. Callahan, do you recognize
19 the document that is in front of you on
20 your screen?

21 (Witness reviews document.)

22 A. As I sit here right now, I
23 don't necessarily recognize it.

24 Q. Do you have any reason to doubt
25 that you received a calendar invite to a

1 MARK CALLAHAN

2 meeting with Mr. Iacovacci regarding his
3 health update and personal discussion for
4 January 6th of 2016 at 8:30 a.m. to which
5 you and Doug Monticciolo were invited as
6 well?

7 A. As I sit here right now, that's
8 what this looks like.

9 Q. Do you recall attending such a
10 meeting?

11 (Witness reviews document.)

12 A. As I sit here right now, I
13 don't -- I don't really recall the -- that
14 meeting itself.

15 Q. Do you have any recollection of
16 sitting down and you see the location there
17 is listed as DM office, I take it that --
18 what does that refer to in your view? Is
19 that what -- is that one way of referring
20 to Mr. Monticello's office?

21 (Witness reviews document.)

22 A. It -- it seems reasonable that
23 DM office would be Doug Monticello's
24 office.

25 Q. I'd agree.

1 MARK CALLAHAN

2 So, looking at this document,
3 does it refresh your recollection at all,
4 do you have any general recollection of
5 sitting down with Mr. Iacovacci and
6 Monticciolo in the -- in the morning of
7 January 6th to discuss Mr. Iacovacci's
8 health situation and to have a personal
9 discussion?

10 A. As I sit here right now, I
11 don't recall that meeting.

12 Q. Um, any reason to doubt that at
13 that meeting Mr. Iacovacci informed you
14 that he was planning to retire from Brevet?

15 MR. SOLOMON: I object to the
16 question.

17 (Witness reviews document.)

18 A. As I sit here right now, the --

19 (Witness reviews document.)

20 A. -- given the -- follow -- the
21 meeting we had after this, where it didn't
22 even come up in that meeting, yes, there
23 would be reason to dispute that he was
24 talking about retirement.

25 Q. Okay. And what was the meeting

1 MARK CALLAHAN

2 that we had after this?

3 A. It was really about his health.

4 Q. Okay. What was the meeting
5 that you had after that you had in mind?

6 A. I -- I recall a meeting at a
7 restaurant or a diner somewhere near
8 Tribeca.

9 Q. Okay. And do you know when
10 that meeting took place?

11 A. As I sit here right now, I
12 don't recall when that meeting took place.

13 Q. And it's your testimony that
14 the meeting that took place in the Tribeca
15 area at that meeting the topic of
16 Mr. Iacovacci's retirement or withdrawal
17 from Brevet did not come up?

18 A. As I sit here right now, I
19 recall that again, he was talking about the
20 fact that he was physically unable to work
21 and wasn't sure whether or not he would
22 ever be able to physically be able to work.
23 And the conversation was expanded to a
24 little bit of discussion around -- about
25 the fact that he was looking for health

1 MARK CALLAHAN

2 insurance, looking to, um, you know, remain
3 an employee for as long as possible, to --
4 to maintain that health insurance and that
5 we would -- you know, that's my
6 recollection.

7 Q. So, you recall discussing with
8 him at the meeting in Tribeca his desire to
9 try to keep health insurance in place for
10 as long as possible given his medical
11 situation; is that right?

12 A. As I sit here right now, that's
13 my recollection.

14 Q. And you understood that the
15 reason he was raising the question of how
16 long Brevet could provide him with health
17 insurance was because he had communicated
18 to you that he was unable to continue
19 working and that he intended to retire,
20 correct?

21 A. It's my intention that he
22 wanted to maintain an employee for as long
23 as possible so that he would maintain that
24 health insurance regardless of whether or
25 not he was doing any work.

1 MARK CALLAHAN

2 Q. Right. So, when you say he
3 wanted to remain an employee, you mean he
4 wanted to qualify for as long as possible
5 for health insurance given his medical
6 situation; is that right?

7 A. That's not my understanding.

8 Q. Your understanding is that he
9 wanted to continue working for as long as
10 possible?

11 A. It is my understanding that he
12 wanted to remain an employee for as long as
13 possible.

14 Q. Right. And that's what I am
15 trying to drill down on you -- with you,
16 Mr. Callahan. When you say "remain an
17 employee," you're referring to the fact
18 that an employee status would allow him to
19 have health insurance coverage from Brevet,
20 correct?

21 A. It's my understanding that
22 employee status is -- is one way that one
23 could have health insurance from Brevet.

24 Q. Is it your understanding that
25 another way to have health insurance from

1 MARK CALLAHAN

2 Brevet is for someone to cease being an
3 employee, but for Brevet to continue to
4 allow them to keep their medical coverage
5 for a period of time after they ceased
6 working?

7 A. No, that's not my
8 understanding.

9 Q. Is it your understanding that
10 at whatever point in time someone would
11 cease to be an employee, that person would
12 necessarily lose their medical coverage
13 from Brevet?

14 A. That's not my understanding
15 either.

16 Q. Okay. What is your
17 understanding about the relationship
18 between health coverage and being an
19 employee?

20 A. My understanding is that when
21 you're an employee of Brevet, Brevet
22 provides -- provides for the options to opt
23 into health coverage.

24 Q. Okay. Is there any other way
25 to get Brevet health coverage if you're not

1 MARK CALLAHAN

2 a Brevet employee through Brevet?

3 A. My understanding is that if you
4 are no longer an employee, you can opt into
5 COBRA.

6 Q. Okay. And separate and apart
7 from COBRA, are you aware of any other way
8 that Brevet could provide medical insurance
9 for an individual who was an employee, but
10 ceased functioning as an employee?

11 A. As I sit here right now, I
12 don't know of any other way besides having
13 -- I believe that in order to be on the
14 health plan, you need to be an employee.

15 Q. And COBRA was only available
16 for a finite period of time following
17 the end of an employee's employment,
18 correct?

19 A. It's my understanding that yes,
20 it's a finite period of time -- finite
21 amount of time, but I don't know the amount
22 of time, and I believe that amount of time
23 continues to change.

24 Q. So, you understood when
25 Mr. Iacovacci was talking to you about how

1 MARK CALLAHAN

2 long he could remain an employee of Brevet,
3 he was asking you how long Brevet would be
4 able to keep him on his medical insurance,
5 correct?

6 A. That's not correct.

7 Q. What's not correct about what I
8 just said?

9 A. If you're implying that how
10 long -- are you implying that how long he
11 could utilize health insurance inclusive of
12 COBRA?

13 Q. I'm not, I'm not including
14 COBRA.

15 A. It's my understanding that Paul
16 was looking for him to be employed as long
17 as possible.

18 Q. Because he wanted health
19 insurance for as long as possible?

20 A. I -- I can't -- -- I don't know
21 what his -- what his, um -- what his
22 reasoning was. But I believe that he
23 talked about health coverage. He also
24 received expense coverage and salary
25 throughout that time period.

1 MARK CALLAHAN

2 Q. Okay. And was Brevet open to
3 providing Mr. Iacovacci with those
4 benefits, some or all of those benefits
5 even though he was unable to work?

6 A. As long as Mr. Iacovacci was an
7 employee for Brevet Holdings, he was
8 entitled to all of those.

9 Q. I understand that.

10 My question is: Was Brevet
11 open to allowing Mr. Iacovacci to remain an
12 employee of Brevet Holdings notwithstanding
13 the fact that Mr. Iacovacci could no longer
14 perform his job duties?

15 A. As I sit here right now, he did
16 remain an employee.

17 Q. So, is the answer to my
18 question yes?

19 A. Can you ask the question again?

20 Q. Sure.

21 MR. CYRULNIK: Can the court
22 reporter please read back the
23 question?

24 (Whereupon, the referred to
25 question was read back by the

1 MARK CALLAHAN

2 Reporter.)

3 THE WITNESS: I just lost you
4 for a moment. You dropped off there
5 for a second.

6 So, the key -- just going back
7 to -- that was a little choppy in how
8 it was read back. The key part of
9 the question is, from the beginning,
10 can you read that part again?

11 (Whereupon, the referred to
12 question was read back by the
13 Reporter.)

14 A. My understanding is that --
15 that -- I guess the question was whether or
16 not we were open to it?

17 I mean, Brevet continued --
18 Brevet Holdings continued to pay
19 Mr. Iacovacci and include him in all of his
20 -- all the firm benefits from January
21 through October of 2016.

22 Q. So, yes?

23 A. That's -- I don't have anything
24 else to add.

25 Q. Well, you're not claiming that

1 MARK CALLAHAN

2 Mr. Iacovacci somehow coerced you into
3 doing that, right?

4 MR. SOLOMON: I object to the
5 question.

6 A. You're asking whether or not I
7 think Mr. Iacovacci coerced us into it?

8 Q. Well, I am trying to understand
9 what you meant by, I have nothing to add to
10 the question -- to the answer when I asked
11 you a straightforward yes or no question
12 whether Brevet was open to allowing Mr.
13 Iavocacci to remain on as an employee,
14 notwithstanding the fact that he wasn't
15 able to work. And I believe your answer
16 concerned what they ultimately did as
17 opposed to answering whether they were open
18 to doing so, and so I am trying to clarify.

19 A. Yeah. I guess I would clarify
20 by saying, it was uncertain at that point
21 in time as to whether or not he was or
22 wasn't able to work.

23 Q. Did you think he was working
24 full-time from January until October of
25 2016 for Brevet?

1 MARK CALLAHAN

2 A. It was my understanding that he
3 wasn't working full-time for Brevet during
4 that time period.

5 Q. At the time, did you believe
6 that he was working full-time for Brevet
7 during that time period?

8 MR. SOLOMON: I object to the
9 question.

10 A. During that can time period,
11 I -- my understanding is that he was not
12 working full-time for Brevet, when he was,
13 um -- when he was undergoing his surgeries
14 and shortly thereafter his surgeries.

15 My understanding also was that
16 during that time period, I guess to get
17 back to some of our earlier topics about
18 being incapacitated, he wasn't
19 incapacitated, but clearly wasn't working
20 full-time for Brevet because it appeared
21 that he was starting to do other things,
22 um, um, counter to Brevet and counter to
23 Brevet's investors.

24 Q. When are you referring to
25 having had knowledge that Mr. Iacovacci was

1 MARK CALLAHAN

2 engaging in the activities you just
3 described?

4 A. With respect to his activities,
5 I -- I don't recall, you know, in terms of
6 his -- his athletic activities, his hikes,
7 his traveling, his amusement parks, I
8 believe that we learned that in the midst
9 of litigation.

10 With respect to his potentially
11 acting against or to the detriment of
12 Brevet and to the detriment of Brevet's
13 investors, that's something that we
14 investigated over a time period from
15 probably May of '16 through October.

16 Q. Okay. So, we are gonna get to
17 that. But before we get into the date,
18 let's talk about prior to May of '16 then.

19 Prior to May of '16, you
20 understood, it was your understanding that
21 Mr. Brevet was employing Mr. Iacovacci,
22 that is, providing him benefits and salary
23 and reimbursements notwithstanding the fact
24 that Mr. Iacovacci was not working
25 full-time for Brevet.

1 MARK CALLAHAN

2 Is that a fair statement?

3 A. It is my understanding that
4 Mr. Iacovacci was receiving everything you
5 just said, salary, benefits and he wasn't
6 working full-time at that point in time.

7 Q. And the reason why Brevet
8 agreed to pay him and provide him those
9 benefits and salary notwithstanding the
10 fact that he was not working full-time was
11 what?

12 A. As I sit here right now, I -- I
13 -- I -- I think that, um, I'm appreciative
14 that Brevet does things like that. I
15 haven't been working full-time over the
16 last four months and I've received salary
17 and benefits and I am very appreciative of
18 that.

19 Q. Understood.

20 And so, fair to say that Brevet
21 was a company that appreciated its
22 long-time contributors and was flexible
23 with respect to providing salary or
24 benefits to those individuals in certain
25 circumstances even though those individuals

1 MARK CALLAHAN

2 couldn't work full-time?

3 MR. SOLOMON: Object to the
4 question.

5 A. It's my understanding it has
6 nothing to do whether or not somebody's a
7 long-standing contributor to Brevet.

8 Q. So, what -- what then is the
9 reason for Brevet providing full salary and
10 benefits to be it Mr. Iacovacci or be it
11 you in a circumstance where you are not
12 working full-time?

13 A. It is my understanding that
14 that, you know, call it what you want,
15 Brevet has a heart, I guess, if somebody
16 has some medical issues, it's not something
17 that Brevet looks to terminate people.

18 Unfortunately, there are times
19 such as these that employees take advantage
20 of that.

21 Q. And so, I take it when you were
22 referring to the last four months for you,
23 is that also a situation where you're not
24 working full-time for a personal medical
25 reason?

1 MARK CALLAHAN

2 A. That is correct.

3 Q. Okay. Did you have a
4 discussion with anybody at Brevet about
5 how long they will -- they would be
6 agreeing to employ you fully in the face
7 of an inability to work the same hours that
8 you had been working traditionally?

9 A. I don't recall any -- any
10 conversations that went into that detail,
11 but there were certainly conversations
12 about availability and amount of time
13 working.

14 Q. And those were conversations
15 you had with Mr. Monticciollo?

16 A. It's -- it's my recollection
17 that I had those conversations with the,
18 um, the HR Department and as well as more
19 periphery with Mr. Monticciolo and Ms. Da
20 Silva Vint.

21 Q. We wish you all the best with
22 respect to that medical situation.

23 A. Thank you.

24 Q. Returning to Mr. Iacovacci
25 then.

1 MARK CALLAHAN

2 So, in light of his health
3 situation, is it fair to say --

4 MR. CYRULNIK: Let me reverse
5 those, so I'll withdraw the question.

6 Q. Is it fair to say that in light
7 of his health situation, Brevet wanted to
8 accommodate him as best they could to
9 continue to employ him and provide him
10 benefits notwithstanding the fact that they
11 understood he would not be able to devote
12 his full-time and attention to working at
13 the company in 2016?

14 A. It's my recollection that that
15 -- that Brevet understood that the --
16 excuse me, his ability to work would be
17 curtailed early on in the year surrounding
18 a couple of surgeries that he was having,
19 uncertain as to what it would mean for the
20 latter part of the year.

21 Q. So, at least with respect to
22 the first part of the year, what I asked
23 was correct?

24 A. With respect to whether or not
25 he would be -- have limitations on his

1 MARK CALLAHAN

2 availability while he was undergoing
3 surgery and rehab, that's correct.

4 Q. When you met with him, I know
5 you said you didn't recall the January 6th
6 meeting, but you did recall another
7 in-person meeting in Tribeca, when you met
8 with him, he was in a cast?

9 A. It's my recollection that he
10 was -- I don't know what you mean whether
11 it was -- I don't believe it was a hard
12 cast, but he had something -- it was
13 something.

14 Q. Did you know that his leg was
15 bleeding?

16 A. I don't recall seeing a leg
17 bleeding.

18 Q. Do you recall him telling you
19 that his legs were bleeding?

20 A. I don't recall whether or not
21 -- I mean -- I don't recall whether he did
22 or didn't say that his leg was bleeding.

23 Q. And is it your -- is it your
24 testimony that Mr. Iacovacci never told you
25 any time in January that he intended to

1 MARK CALLAHAN

2 retire from Brevet?

3 A. It's my recollection that Mr.
4 Iacovacci told us he was unable to continue
5 to work and he was uncertain as to whether
6 or not he'd ever be able to work, given he
7 wasn't sure he'd ever be able to travel due
8 to his leg -- or the issues with his legs.

9 Q. And I understand that and I
10 appreciate that. But I do want to zero in
11 on the question that I'm asking --

12 A. I wasn't --

13 MR. SOLOMON: He wasn't
14 finished with the answer.

15 Q. Oh. Please continue.

16 A. Oh, sorry. I'm just trying to
17 get my train of thought back.

18 I can't remember now.

19 Q. My apologies. I didn't know
20 you were in the middle of the answer.
21 Maybe my follow-up with jog your answer:
22 What I was following up with was I
23 appreciate the testimony you gave about
24 your recollection regarding his describing
25 his medical condition and his uncertainty

1 MARK CALLAHAN

2 with respect to his prognosis.

3 My question is specifically
4 with respect to the subject of retiring or
5 withdrawing from Brevet.

6 Is it your testimony, Mr.
7 Callahan, under oath that Mr. Iacovacci did
8 not discuss with you in January of 2016 the
9 subject of his retiring or withdrawing from
10 Brevet?

11 MR. SOLOMON: I object to the
12 question. It has been asked several
13 times.

14 A. Yeah. As I sit here right now,
15 my recollection is that he certainly never
16 brought up withdrawal and in conversations,
17 never brought up retiring, it was more of a
18 general, I don't think I'm able to continue
19 the work because flying is such an
20 important part of what he did and he didn't
21 think he'd ever be able to get on a plane
22 again.

23 Q. Going with your recollection
24 for a minute: Let's assume he talks to you
25 about his concern that he'll never be able

1 MARK CALLAHAN

2 to continue to work, did you think that his
3 -- his view was that he was gonna continue
4 to remain on in his capacity as member and
5 employee of the various Brevet entities
6 even though he couldn't work?

7 A. As I sit here right now, I
8 don't have a recollection as to what I
9 was -- what I thought about what he was
10 asking at that point.

11 Q. But you're certain that he
12 didn't mention to you that because of his
13 concerns about his medical condition that
14 he wanted to discuss retiring or
15 withdrawing from Brevet, right?

16 MR. SOLOMON: I object to the
17 question.

18 A. Yeah, I don't have anything
19 further to add on that.

20 Q. So, is the answer yes, you're
21 certain that those subject matters didn't
22 come up?

23 A. That is not what I previously
24 said. As I sit here right now, my
25 recollection is that he never brought up

1 MARK CALLAHAN

2 withdrawing and that he never brought up
3 retiring, he just brought up not being able
4 to physically work.

5 Q. Okay. Let's take a look at the
6 next exhibit, which is Exhibit 7 in your
7 folder.

8 (Whereupon, e-mail chain
9 following up on retiring was marked
10 as Exhibit 7 for identification as of
11 this date by the Reporter.)

12 (Witness reviews document.)

13 MR. SOLOMON: Exhibit 1, it's
14 the first page.

15 MR. CYRULNIK: It's Exhibit --
16 yeah, the first page says either
17 Exhibit 1 or I.

18 MR. SOLOMON: It's on the
19 screen.

20 Q. If you can take a look at that
21 document and tell me whether you recognize
22 that e-mail chain and we're gonna start at
23 the bottom of the final page, which is Page
24 3 of the pdf, Page 2 of the internal
25 pagination.

1 MARK CALLAHAN

2 (Witness reviews document.)

3 Q. Do you have that e-mail in
4 front of you? It's an e-mail from Paul
5 Iacovacci to Doug Monticciolo and yourself
6 dated January 12th of 2016, at 5 p.m.

7 Do you see that?

8 A. I see that.

9 Q. And the subject line, can you
10 read that into the record, please?

11 A. Subject: I wanted to follow-up
12 on last week's retirement discussion that
13 we had while I was in the office.

14 Q. Mr. Callahan, would you agree
15 with me that the subject line of this
16 e-mail indicates that you, Doug and
17 Mr. Iacovacci did, in fact, meet in the
18 office earlier in January of 2016 and that
19 there was a discussion about
20 Mr. Iacovacci's retirement.

21 (Witness reviews document.)

22 A. Again, as I sit here right now,
23 I would agree with you that this e-mail
24 would -- would, um, infer that there was a
25 meeting earlier in January. But I -- I

1 MARK CALLAHAN

2 don't believe that it infers what was
3 discussed in that meeting simply because of
4 the subject line that Mr. Iacovacci used
5 there

6 Q. I want to make sure I
7 understand your testimony, Mr. Callahan.

8 Paul Iacovacci sends you an
9 e-mail on January 12th referencing a
10 retirement discussion from the week before
11 and it's your testimony that that subject
12 line does not suggest that you in fact had
13 a retirement discussion with Mr. Iacovacci
14 the prior week?

15 A. What I am saying is -- is -- as
16 I sit here right now, based on my
17 recollection, he didn't use the terms
18 retirement or withdrawal.

19 Q. Well, you would agree with me,
20 Mr. Callahan, that he used them here,
21 right? He used the term retirement in the
22 subject line of this e-mail to you,
23 correct?

24 (Witness reviews document.)

25 A. That's correct.

1 MARK CALLAHAN

2 Q. So, if you had any doubt about
3 what his intentions were after meeting with
4 him in person prior to this e-mail, would
5 you agree with me that it was clear that at
6 least from his perspective what he was
7 trying to communicate to you was that he
8 wanted to retire?

9 (Witness reviews document.)

10 A. It is my understanding even
11 from this e-mail that perhaps he wanted to
12 follow up on the discussion. Whether or
13 not it was his intention was for him to
14 retire is not clear from this e-mail.

15 Q. Do you see your response, the
16 next link in the chain up on January 12th
17 at 2:59 p.m., which I am guessing is a
18 different time zone, where you respond to
19 his e-mail with the subject line that we
20 just read?

21 (Witness reviews document.)

22 A. I see that e-mail.

23 Q. And do you see in response to
24 the subject line, I wanted to follow up on
25 last week's retirement discussion that we

1 MARK CALLAHAN

2 had while I was in the office where
3 Mr. Iacovacci asks you when we can discuss
4 transition.

5 Do you see that you respond:
6 "How are you feeling? Are you able to get
7 around at all yet without severe pain? The
8 rest of the week is packed solid. Monday
9 is MLK Day, so I will not be in. And
10 Tuesday, I am likely going to Engage Point
11 in Maryland. So, can we say Wednesday of
12 next week? I spent most of the day dealing
13 with your best friend, Dean. He misses
14 you."

15 Do you see that?

16 A. I see that e-mail.

17 Q. Mr. Callahan, why didn't you
18 respond to Mr. Iacovacci -- what retirement
19 discussion are you talking about?

20 (Witness reviews document.)

21 A. As I sit here right now, I
22 don't -- I don't know what I was thinking
23 at that point in time.

24 Q. Well, would you agree with me
25 that if he referenced a retirement

1 MARK CALLAHAN

2 discussion that didn't in fact take place
3 the prior week, you would have naturally
4 asked him what he was talking about in
5 response to that e-mail?

6 A. Again, as I sit here right now,
7 especially, you know, you highlighted that
8 this is a different time zone, so clearly I
9 was traveling, I don't know what I was
10 thinking when I received this or where I
11 was when I received this.

12 Q. What did you understand
13 Mr. Iacovacci to mean when he asked you
14 about discussing the transition?

15 (Witness reviews document.)

16 A. As I sit here right now, it's
17 my understanding that transition would be
18 that he was unable to do certain of his
19 functions and required to -- he needed to
20 transition some of the work he was working
21 on.

22 Q. Do you recall discussing the
23 prospect of transitioning his job
24 responsibilities to another Brevet
25 individual?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 don't -- I don't recall having any specific
4 discussions about transitioning.

5 Q. Mr. Callahan, in light of this
6 e-mail chain, is there anything about your
7 prior testimony in response to my questions
8 about discussions with Mr. Iacovacci
9 regarding retirement or withdrawal in
10 January of 2016 that you would like to
11 revise?

12 (Witness reviews document.)

13 A. As I sit here right now, no,
14 there is nothing that I would like to
15 advise in terms of those questions were
16 whether or not there were any discussions
17 about it and I don't believe that there
18 were any discussions where retirement or
19 withdrawal was communicated. This is a
20 separate -- this is an e-mail, which I
21 don't view as a discussion.

22 Q. So, when you were referring to
23 discussions, you were excluding e-mail
24 communications?

25 A. My understanding of discussions

1 MARK CALLAHAN

2 is talking.

3 Q. So, is the answer to my
4 question, yes?

5 A. Yes.

6 Q. When -- okay.

7 Was there anything else you
8 were excluding from your answer when you
9 answered my question about discussions --

10 MR. CYRULNIK: Withdrawn. Let
11 me phrase it differently.

12 Q. Are there any other forms of
13 communication other than talking that you
14 meant to exclude from your answer when I
15 asked you my question previously about
16 discussions regarding retirement or
17 withdrawal in January of 2016?

18 MR. SOLOMON: I object to the
19 question.

20 A. As I sit here right now, I
21 don't know of any other forms of
22 communications that you'd be talking about.

23 Q. Did you retain counsel to
24 negotiate a retirement package with
25 Mr. Iacovacci or his attorney?

1 MARK CALLAHAN

2 A. It is my understanding that I
3 personally did not en- -- engage counsel,
4 but and -- and this is counsel that we
5 already had, I guess had engaged, but we
6 had -- we enlisted counsel to prepare and
7 negotiate and Separation Agreement with
8 Mr. Iacovacci.

9 Q. Why did you do that?

10 A. Counsel was engaged -- it's my
11 understanding that counsel was engaged to
12 prepare a Separation Agreement because
13 there was going to be a separation.

14 Q. What's the basis for your
15 assumption that there was going to be a
16 separation with Mr. Iacovacci.

17 (Witness reviews document.)

18 A. It's my recollection that there
19 was a subsequent conversation to -- to
20 these, um, subsequent -- subsequent to this
21 e-mail and subsequent to the two
22 conversations we've spoken about, there was
23 another conversation.

24 Q. Okay. And was that other
25 conversation about retiring or withdrawing

1 MARK CALLAHAN

2 from Brevet?

3 A. It's my recollection that that
4 conversation was about a Separation
5 Agreement.

6 Q. When did this conversation that
7 you are referring to take place?

8 A. As I sit here right now, I
9 don't recall, but it would be -- I would --
10 I don't recall.

11 Q. What's your best recollection?
12 Give me a time period that you can pinpoint
13 for me.

14 MR. SOLOMON: I object to the
15 question.

16 Q. Was it after January of 2016?
17 (Witness reviews document.)

18 A. As I sit here right now, I
19 believe it would be after January 12th,
20 2016.

21 Q. Do you know if it was after
22 January 20th of 2016?

23 A. I don't know.

24 Q. Was it after the Tribeca
25 meeting that you were referencing earlier?

1 MARK CALLAHAN

2 A. What was the date of the
3 Tribeca meeting?

4 Q. I can't make a representation
5 about it, but I can ask you whether January
6 20th rings a bell?

7 A. As I sit here right now,
8 January 20th doesn't ring a bell.

9 Q. Okay. Do you know whether just
10 from a sequencing perspective the
11 conversation that you are now recalling
12 took place before or after the in-person
13 meeting in TriBeCa?

14 A. As I sit here right, now my
15 recollection is that it took place after
16 the TriBeCa meeting.

17 Q. Okay. And is it your testimony
18 that this conversation that you recall --
19 this is a phone conversation?

20 A. As I sit here right now, it is
21 my recollection that it was a phone
22 conversation.

23 Q. Okay. So, I am asking you
24 questions about that conversation. Given
25 that you don't have the precise date, I

1 MARK CALLAHAN

2 will refer to it as the conversation that
3 took place after the meeting in TriBeCa.

4 Is that a fair way of
5 describing it based on your recollection?

6 A. Yes.

7 Q. So, with respect to the
8 conversation that took place after the
9 meeting in Tribeca, I want to make sure I
10 am clear on your testimony: Is it your
11 testimony that during this conversation the
12 subject of Paul retiring or withdrawing
13 from Brevet also did not arise?

14 MR. SOLOMON: I object to the
15 question.

16 A. As I sit here right now, it is
17 my recollection as I've already stated that
18 that -- what was discussed was the
19 Separation Agreement and that there was no
20 discussion of -- that, you know, the use of
21 the word of retirement or withdrawal.

22 Q. That's an important switch
23 there, so I want to make sure that I am not
24 missing -- we are not appreciating what
25 you're saying.

1 MARK CALLAHAN

2 I heard you, in giving your
3 answer, talk about referencing the word
4 "retirement" or "withdrawal." I'm
5 asking you a slightly broader question,
6 Mr. Callahan.

7 Did the subject, whatever words
8 were used during that phone conversation,
9 did the subject of Mr. Iacovacci retiring
10 or withdrawing from Brevet come up at all
11 during that call?

12 MR. SOLOMON: I object to the
13 question, it's a mischaracterization.

14 A. Yeah. As I sit here right now,
15 my recollection is that as I have stated
16 already, the -- you know, the retirement
17 and withdrawal were not discussed.

18 Q. Why was a Separation Agreement
19 being prepared for somebody who was neither
20 retiring nor withdrawing from Brevet?

21 A. I didn't state that the -- that
22 he was -- the Separation Agreement was --
23 as I sit here right now, I recall that the
24 Separation Agreement was being drafted to
25 address the potential for Paul no longer

1 MARK CALLAHAN

2 working for Brevet due to potential health
3 issues.

4 Q. You gotta to help me out here:

5 So, Paul had been working for
6 Brevet for more than a decade or I think
7 more than a decade at this period of time;
8 is that right? Am I off by a couple of
9 years?

10 A. As I sit here right now, I
11 don't -- I don't know those dates.

12 Q. Okay. Paul had been working
13 for Brevet for many years as of 2016,
14 correct?

15 A. I -- as I sit here right now, I
16 believe that to be the case.

17 Q. Do you agree with me that the
18 only way that that ceases to be the case,
19 that is that Mr. Iacovacci is no longer
20 working for Brevet, is either he withdraws
21 or retires, option one; two, Brevet
22 terminates his employment, or three, God
23 forbid, he dies?

24 Am I missing any other option
25 for how that relationship ceases to exist?

1 MARK CALLAHAN

2 A. As I sit here right now?

3 Q. Yes.

4 A. With respect to the
5 relationship with Brevet being many
6 entities, you can have a -- I am not aware
7 of any other options except for the fact
8 that you can have options within those
9 options because there's multiple entities.

10 Q. Fair enough.

11 So, let's stick with those
12 three options which strike me as the
13 logical ones too.

14 You weren't asking your counsel
15 to prepare a perspective Separation
16 Agreement because you were predicting that,
17 God forbid, there'd be a death that would
18 cause the separation of Mr. Iacovacci from
19 Brevet, right?

20 A. As I sit here right now, I
21 believe that's correct.

22 Q. And when did you ask your
23 counsel -- when do you first recall asking
24 your counsel to prepare a draft Separation
25 Agreement; was that in February of 2016?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 don't recall the date when -- when we went
4 -- when Brevet asked counsel to prepare a
5 Separation Agreement.

6 Q. Okay. You would agree with me
7 it was sometime before April of 2016,
8 right?

9 A. As I sit here right now, I
10 think I just know that it was after the
11 January 12th or 20th date that we were
12 previously talking about it.

13 Q. Okay. I think we're left with
14 two options, if I'm remembering where we
15 were.

16 A. The only other two ways that
17 Mr. Iacovacci would be separating from
18 Brevet, now that we've taken death out of
19 the picture, was that Brevet anticipated
20 his desire to leave, withdrawn, retire or
21 whatever suboptions you have, or that
22 Brevet was asking his counsel to prepare a
23 separation for somebody that they were
24 intending to terminate.

25 Would you agree with me that as

1 MARK CALLAHAN

2 of the time that you had engaged counsel to
3 prepare a first draft Separation Agreement
4 that it was not Brevet's intention to be
5 terminating Mr. Iacovacci from Brevet.

6 A. As I sit here right now, that's
7 correct.

8 THE COURT REPORTER: I didn't
9 get that answer.

10 A. As I sit here right now, that's
11 correct

12 Q. Okay. So, that leaves us,
13 process of elimination, with one option:
14 You would agree with me that the reason
15 that Brevet engaged counsel to draft a
16 Separation Agreement is because Brevet
17 understood that Mr. Iacovacci wanted to
18 leave Brevet, be it by -- via retirement,
19 withdrawal, whatever term you want to use,
20 that he was going to be voluntarily exiting
21 the company.

22 Is that fair?

23 MR. SOLOMON: Note my
24 objection, please.

25 A. As I sit here right now, it --

1 MARK CALLAHAN

2 it's -- it's my understanding that -- that
3 Paul had expressed to us a -- a -- a desire
4 to leave because he was incapable of ever
5 working again.

6 Q. Understood.

7 When did he first express that
8 to you?

9 A. As I sit here right now, I
10 don't recall.

11 Q. Could it have been in January
12 6th, in that meeting that was referenced in
13 that January 12th e-mail?

14 MR. SOLOMON: I object to the
15 question.

16 A. As I sit here right now, I
17 don't recall.

18 Q. Could have been January 6th?

19 MR. SOLOMON: Objection; calls
20 for speculation.

21 A. As I sit here right now, I
22 don't recall.

23 Q. Well, you saw the reference to
24 a meeting that took place in the week prior
25 to January 12th in the e-mail that we

1 MARK CALLAHAN

2 looked at together, that was Exhibit 7,
3 that was the meeting that was described in
4 the subject line of Mr. Iacovacci's January
5 12th e-mail to you; do you recall that
6 reference?

7 MR. SOLOMON: I object to your
8 testifying.

9 MR. CYRULNIK: My testifying?
10 I am just asking whether he recalls
11 the reference.

12 A. I see the -- the, um, the
13 Exhibit 7.

14 Q. Okay. Could the discussion,
15 retirement discussion that is referenced in
16 the subject line, last week's retirement
17 discussion, could that be the first time
18 that Mr. Iacovacci expressed his desire
19 leave as a result of his medical situation?

20 A. As I have said, I don't recall.

21 Q. So, could that have been the
22 first time Mr. Iacovacci had referenced
23 that to you?

24 A. That could have been or any
25 other time could have been. I don't

1 MARK CALLAHAN

2 recall.

3 Q. Yes.

4 So, it is possible that in
5 January of 2012, you did have a discussion
6 with Mr. Iacovacci, in which he
7 communicated his desire to leave Brevet as
8 a result of his medical situation; is that
9 correct?

10 MR. SOLOMON: Same objection.

11 A. Yeah. I mean, I think as I sit
12 here right now, I think you throw a lot
13 into that. Again, I think I've told you
14 that Mr. Iacovacci was talking about the
15 inability to work.

16 Q. And I understand that
17 Mr. Iacovacci reason, in your view, for
18 wanting to leave may have been associated
19 with his medical condition or inability
20 work and I am trying to isolate what he
21 communicated to you about what he wanted to
22 happen as distinct from what he
23 communicated to you as the reason for him
24 wanting something to happen. So, I totally
25 understand that you're telling me about

1 MARK CALLAHAN

2 what you recall by way of the reason that
3 he provided for you for whatever it is that
4 he was talking to you about, but I just
5 want to focus on the sort of therefore part
6 of what he told you.

7 He told you he was unable to
8 work or concerned that he was unable to
9 work and therefore he wanted to leave
10 Brevet.

11 Is that a fair summary of your
12 recollection of one or more of your
13 discussions with Mr. Iacovacci?

14 MR. SOLOMON: Same objection.

15 A. As I sit here right now, it's
16 my recollection that that occurred after
17 these January events.

18 Q. Okay. How long after these
19 January events?

20 A. As I sit here right now, I
21 think as I have already answered, I don't
22 recall.

23 Q. Do you know if it was prior to
24 May of 2016 that he communicated his desire
25 to leave?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 believe it was prior to May.

4 Q. Okay.

5 A. Prior to May, where he -- where
6 we had discussions around the need for a
7 comprehensive Separation Agreement.

8 Q. Whose view was it that you
9 needed a comprehensive Separation
10 Agreement; his or yours?

11 A. As I sit here right now, I
12 believe it was Counsel's view.

13 Q. His counsel or your counsel?

14 A. I believe it was -- as I sit
15 here right now, I believe it was both.

16 Q. Did Mr. Iacovacci ever tell you
17 that he wanted to have a Separation
18 Agreement in place?

19 A. As I sit here right now, I
20 don't recall.

21 MR. CYRULNIK: Well, why don't
22 we go off the record?

23 THE VIDEOGRAPHER: Off the
24 record at 1:01.

25 This marks the end of Media

1 MARK CALLAHAN

2 Unit Number 3.

3 Thank you.

4 (Whereupon, an off-the-record
5 discussion was held.)

6 THE VIDEOGRAPHER: We are on
7 the record at 1:41.

8 This marks the beginning of
9 Media Unit Number 4.

10 Please proceed.

11 Q. Welcome back, Mr. Callahan.

12 Before lunch, we were talking
13 about your discussions about Mr. Iacovacci
14 in connection with his illness and his
15 potential departure from Brevet.

16 Do you recall those general
17 discussions?

18 A. I recall the discussions around
19 having this -- having discussions with
20 Mr. Iacovacci about a -- potentially
21 leaving, yes.

22 Q. Okay. I want to make sure that
23 I am not misunderstanding one thing that
24 you are saying: It's not your testimony
25 that you did discuss with Mr. Iacovacci

1 MARK CALLAHAN

2 retirement, but you didn't discuss
3 withdrawal?

4 A. I am trying to follow the
5 double negative there. You're asking --
6 can you rephrase that?

7 (Whereupon, an off-the-record
8 discussion was held.)

9 THE VIDEOGRAPHER: We are off
10 the record at 1:43.

11 (Whereupon, a recess was
12 taken.)

13 THE VIDEOGRAPHER: On the
14 record at 1:47.

15 Please proceed.

16 MR. CYRULNIK: Thanks.

17 Q. Yeah. The question, Mr.
18 Callahan, is: Are you distinguishing
19 between discussions about retirement and
20 the discussions about withdrawal that you
21 had with Mr. Iacovacci?

22 A. I -- I -- I naturally
23 distinguish between those if they're in the
24 context of different entities.

25 Q. So, is there a different answer

1 MARK CALLAHAN

2 to the question that I would ask you
3 whether you had any discussions with
4 Mr. Iacovacci about withdrawal versus my
5 question, did you have any discussions with
6 Mr. Iacovacci about retirement in January
7 of 2016?

8 A. No.

9 Q. Okay. How about in February of
10 2016; is there a distinction between
11 discussions -- is there a distinction
12 between your answers to my question about
13 whether you had discussions with
14 Mr. Iacovacci about withdrawal or about
15 retirement in February of 2016?

16 MR. SOLOMON: I object to the
17 question.

18 A. As I sit here right now, I
19 don't recall conversations in February of
20 2016.

21 Q. So, both January and February
22 of 2016, the answer to both my questions
23 would be, no, I don't recall discussions
24 about either retirement or withdrawal?

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 don't recall conversations with
3 Mr. Iacovacci regarding retirement or
4 withdrawal.

5 Q. Okay. Same question as we move
6 on to March of 2016.

7 A. As I sit here right now, I
8 don't recall, but it's -- I don't recall
9 any discussions really from that point
10 forward.

11 Q. Okay. So, I'm not gonna bother
12 wasting your time going through each of the
13 months. The answer to my question, do you
14 recall any conversations with Mr. Iacovacci
15 about retirement or about withdrawal, the
16 answer to my question is, no, you don't
17 recall any conversations about either of
18 those two things from January of 2016 all
19 the way of October of 2016?

20 A. As I sit here right now, I
21 don't recall any conversations regarding
22 specifically retirement or withdrawal
23 during that time period.

24 However, I do recall, and I
25 don't know the time period, a conversation

1 MARK CALLAHAN

2 with Mr. Iacovacci -- Iacovacci whereby it
3 was a discussion of the potential depending
4 on how things go, depending on whether or
5 not surgeries are debilitate- -- lifetime
6 debilitating or not, but the discussion
7 about the potential for leaving Brevet.

8 Q. Are you thinking of a
9 particular conversation that you do recall
10 on that subject?

11 A. As I sit here right now, I
12 think it's a conversation that I already
13 referenced that took place sometime after
14 January 20, 2016. But as I sit here right
15 now, I don't recall when that took place.

16 Q. And is it a single conversation
17 that you are thinking of?

18 A. As I sit here right now, I
19 believe it was a single conversation, but
20 it was a long time ago.

21 Q. And was it a conversation
22 involving just the two of you, you and
23 Mr. Iacovacci?

24 A. As I sit here right now, I
25 don't recall whether or not there was

1 MARK CALLAHAN

2 anybody else on the phone.

3 Q. And that was a phone
4 conversation, right, I think as you had
5 testified to earlier?

6 A. As I sit here right now and as
7 I said before, I believe that was a phone
8 conversation.

9 Q. And that was a conversation --

10 MR. CYRULNIK: Withdrawn.

11 Q. With respect to that
12 conversation, you still would not
13 characterize that conversation as
14 concerning either retirement or withdrawal
15 because neither of those words to your
16 recollection were used; is that right?

17 A. As I sit here right now, my
18 recollection is that neither of those words
19 was used, correct.

20 Q. And that's why you wouldn't
21 characterize it as about retirement or
22 withdrawal?

23 A. As I sit here right now, I -- I
24 wouldn't -- I'm not characterizing it, I am
25 just stating a fact that my recollection

1 MARK CALLAHAN

2 that I don't believe that either retirement
3 or withdrawal was discussed.

4 Q. You -- you don't believe that
5 either of those two topics was discussed?

6 A. As I sit here right now, that's
7 -- that's my recollection.

8 Q. Okay. And shifting from
9 conversations or at least just to clarify,
10 if I included in my question, you know,
11 non-oral conversations, that is, including
12 the written medium, would your answers to
13 my questions about discussions with
14 Mr. Iacovacci concerning retirement or
15 withdrawal change at all?

16 MR. SOLOMON: I object to the
17 question.

18 Q. Do you understand what I mean
19 by that?

20 A. Um, are you asking whether or
21 not the -- there are e-mails between myself
22 Mr. Iacovacci.

23 Q. I'm asking whether or not if I
24 asked you whether or not you had any
25 discussions including e-mails or other --

1 MARK CALLAHAN

2 or letters between January and October of
3 2016 with respect to the subject matter of
4 retirement or withdrawal of Mr. Iacovacci,
5 would you say that you did or did not have
6 such exchanges?

7 MR. SOLOMON: I object to the
8 question.

9 A. As I sit here right now, I
10 don't recall any -- I don't recall whether
11 there were e-mails between myself and
12 Mr. Iacovacci.

13 Q. So, you don't recall either
14 way, there could have been conversations
15 about retirement or withdrawal, or maybe
16 there were not discussions about retirement
17 or withdrawal, you just don't know either
18 way sitting here today?

19 A. As I sit here right now, that's
20 not correct. I'm responding to your
21 question as to whether or not there were
22 any e-mails between us during that time
23 period, and I am not -- I don't recall
24 whether there were any e-mails between
25 myself and Mr. Iacovacci during that time

1 MARK CALLAHAN

2 period.

3 Q. So, you don't know either way
4 whether or not you discussed via the
5 written medium the subject matter of
6 retirement or withdrawal with
7 Mr. Iacovacci?

8 A. As I sit here right now, I
9 don't know whether there are any e-mails
10 between myself and Mr. Iacovacci between, I
11 guess, it's January -- January and October
12 of 2016, besides the e-mails that you've
13 shown me earlier today.

14 Q. How about text messages?

15 A. As I sit here right now, I
16 don't recall which -- whether there are
17 text messages during that time period or
18 not, but those text messages were, um, um,
19 provided pursuant to Discovery, so happy to
20 go through them if you'd like.

21 Q. So, sitting here today, you
22 can't think -- you're not aware of any
23 e-mail communications on the subject matter
24 of retirement or withdrawal that you had
25 with Mr. Iacovacci during the time period

1 MARK CALLAHAN

2 over January through October of 2016.

3 Is that a fair summary of your
4 view?

5 A. As I sit here today, I don't
6 recall whether there are any of those
7 communications.

8 Q. Okay. Would you be surprised
9 if there were?

10 MR. SOLOMON: I object to the
11 question.

12 A. As I sit here today, I don't
13 recall whether there are any. You know,
14 I --

15 Q. I understand.

16 A. I don't know if I would be
17 surprised or not surprised.

18 Q. Okay. So, you wouldn't be
19 surprised if Mr. Iacovacci and you had
20 discussed retirement or withdrawal and you
21 just didn't remember, sitting here today?

22 A. As I sit here right now, that's
23 a different, um, the way you just
24 characterized it as different than what we
25 just were talking about. I don't -- you

1

MARK CALLAHAN

2

asked whether or not I recalled whether

3

there was any written communication between

4

myself and Mr. Iacovacci during that time

5

period, I don't recall whether there is.

6

I'm happy to review anything if you'd like

7

me to.

8

Q. How about discussions that you

9

had outside of Mr. Iacovacci's presence;

10

did you have discussions with Doug

11

Monticciolo in the January to March time

12

period about perspective retirement or

13

withdrawal or departure of Mr. Iacovacci

14

from Brevet?

15

A. As I sit here right now, I

16

don't recall any specific conversations

17

with Mr. Monticciolo.

18

Q. Okay. Do you recall reviewing

19

the LLC agreement to determine what

20

Mr. Iacovacci would be entitled to if he

21

were to leave Brevet in or about the first

22

quarter of 2016 time period?

23

A. As I sit here right now, I

24

don't recall reviewing the LLC agreement

25

regarding -- regarding a, you know,

1 MARK CALLAHAN

2 whatever you just said, I guess regarding
3 compensation.

4 Q. To the best of your
5 recollection, did you ever undertake or
6 direct someone to undertake an analysis of
7 how much compensation Mr. Iacovacci might
8 be entitled to if he were to leave Brevet
9 in 2016?

10 MR. SOLOMON: I object to the
11 question. And if I'm understanding,
12 is it time limited at the back end?

13 MR. CYRULNIK: Um, I am not
14 sure what you're asking, Mr. Solomon,
15 but let me -- let me rephrase the
16 question and make sure that the
17 witness understands.

18 Q. My question is: Did you or --
19 did you undertake or direct someone to
20 undertake, or were you aware that anyone
21 undertook, an analysis of how much
22 compensation Mr. Iacovacci might be
23 entitled to under the LLC Agreements if he
24 were to withdraw from Brevet?

25 And I am asking whether this

1 MARK CALLAHAN

2 analysis was undertaken in 2016.

3 MR. CYRULNIK: If that answers
4 your question, Lou.

5 MR. SOLOMON: It does. Thank
6 you.

7 A. As I sit here right now, I'm
8 not aware of any analysis that I did or
9 anybody else did. Um, I am not aware of
10 directing anybody to perform such analysis
11 in that 2016 timeframe.

12 Q. Would that have mattered to
13 you, Mr. Callahan? Did you care about what
14 compensation Mr. Iacovacci might be
15 entitled to if he were to withdraw from the
16 LLC's under the LLC Agreements?

17 MR. SOLOMON: I object to the
18 word compensation.

19 You can answer the question.

20 A. As I sit here right now, I
21 don't recall having that be a
22 consideration.

23 Q. So, it's your testimony that
24 whether the formula provided for in the LLC
25 agreement would have yielded \$5,000 for

1 MARK CALLAHAN

2 Mr. Iacovacci versus \$50 million, that
3 didn't matter to you in terms of what steps
4 you -- Brevet was going to undertake in
5 response to the discussions they were
6 having with Mr. Iacovacci about his
7 perspective departure from Brevet?

8 MR. SOLOMON: I object to the
9 question.

10 A. As I sit here right now, I
11 don't believe that has any bearing, except
12 for the fact that if -- I would've hoped
13 that it would be \$50 million because then I
14 would be getting paid extremely well as
15 well. So, I would have been much happier
16 if such an analysis was done and we're
17 happy if it came to fruition and I got paid
18 a lot of money.

19 Q. Yeah. Well, we will talk about
20 your compensation in a bit, but I
21 appreciate your point.

22 Let's take a look at your next
23 exhibit that's been marked in your folder
24 as Exhibit 8.

25 (Whereupon, 2/9/2016 Meeting

1 MARK CALLAHAN

2 between Mark and Doug was marked as
3 Exhibit 8 for identification as of
4 this date by the Reporter.)

5 (Witness reviews document.)

6 Q. Do you have that up on your
7 screen?

8 MR. SOLOMON: I think if you
9 hit refresh.

10 2/9/16?

11 MR. CYRULNIK: Um --

12 MR. SOLOMON: It's on the
13 screen.

14 MR. CYRULNIK: Great.

15 Q. Do you see a calendar
16 appointment from February 9th of 2016 for a
17 LLC Agreement/Iacovacci between yourself
18 and Doug Monticciolo?

19 (Witness reviews document.)

20 A. I see that Exhibit 8, yes.

21 Q. And you would agree with me,
22 Mr. Callahan, that you and Mr. Monticciolo
23 did, in fact, have a meeting on February
24 11th of 2016 at which you reviewed the LLC
25 agreements and how they -- provisions

1 MARK CALLAHAN

2 therein pertained to Mr. Iacovacci's
3 perspective departure from Brevet, would
4 you not?

5 A. As I sit here right now, I
6 don't recall whether or not that meeting
7 happened and I don't recall what was
8 discussed in -- in that meeting, if it did
9 happen.

10 Q. So, this doesn't refresh your
11 recollection at all about having that
12 meeting with Mr. Monticciolo, correct?

13 A. No.

14 MR. SOLOMON: I have a
15 question. For clarification, on the
16 document that's being displayed up on
17 the top, it says Exhibit 00008 and
18 then there's some language across the
19 page, that's not part of the
20 document, is it?

21 MR. CYRULNIK: No, that's not
22 part of the document. The document
23 --

24 MR. SOLOMON: Is that how you
25 marked it?

1 MARK CALLAHAN

2 MR. CYRULNIK: Yeah.

3 MR. SOLOMON: All right.

4 Q. Did you have a view one way or
5 the other as to whether or not Mr. -- did
6 you have an understanding one way or the
7 other as to what Mr. Iacovacci would be
8 entitled as to a member -- a departing
9 member of one or more of the LLC's?

10 A. As I sit here right now, it's
11 my understanding that that's covered by the
12 LLC Agreements.

13 Q. Right, that I understand.

14 My question is: Were you
15 aware, were you cognizant to what the LLC
16 Agreements provided in that regard in 2016?

17 A. As I sit here right now, my
18 recollection is that that time I -- I
19 understood because that's how we were, um,
20 treating and paying out, um, Mr. Tripp.

21 Q. When did Mr. Tripp, um, depart
22 as a member of Brevet, the various Brevet
23 entities?

24 A. As I sit here right now, I
25 don't recall.

1 MARK CALLAHAN

2 Q. Well, can you tell me whether
3 it was before or after 2016?

4 A. As I sit here right now, I
5 believe it was prior to 2016.

6 Q. Do you know if it was in 2015?

7 A. As I sit here right now, I
8 don't recall.

9 Q. And what was the reason for Mr.
10 Tripp's departure?

11 A. As I sit here right now, I
12 don't recall.

13 Q. You don't recall whether he
14 just decided he was leaving for no
15 particular reason or whether there was
16 something that he communicated to you as
17 motivating his desire to leave?

18 A. As -- as I sit here right now,
19 I don't recall. I don't recall whether I
20 had those discussions. I believe those
21 discussions would have -- would have been
22 had with Mr. Monticciolo.

23 Q. And you did, in fact,
24 understand that a departing member was
25 entitled to receive a percentage of Brevet

1 MARK CALLAHAN

2 Short Duration Partners' net profits for a
3 period of five years; is that right?

4 A. As I sit here right now, I -- I
5 recall that one of the entities is five
6 years and the other is ten years, I don't
7 recall which is which.

8 Q. Fair enough.

9 So, one of Partners is five
10 years and the other -- one of Partners and
11 Holdings is five years and the other one is
12 ten years, correct?

13 A. As I sit here right now, that's
14 my understanding.

15 Q. And did you in fact pay those
16 net profits and percentages to Mr. Tripp?

17 A. As I sit here right now, I
18 believe that Mr. Tripp was -- was paid
19 his -- was paid out, pursuant to that
20 agreement.

21 Q. And is he still being paid out
22 pursuant to at least the agreement that has
23 a ten-year tail?

24 A. As I sit here right now, I
25 don't know whether or not he's still being

1 MARK CALLAHAN

2 paid or whether or not the ten years
3 surpassed.

4 Q. So, it's possible he retired
5 prior to 2011?

6 A. As I sit here right now, I
7 don't know.

8 Q. You don't know one way or the
9 other?

10 A. If he -- if he is -- as I sit
11 here right now, and he is still being paid,
12 it was after -- theoretically after 2011,
13 or if he's no longer getting paid, it would
14 be before, but I don't know.

15 Q. Did Mr. Tripp and Brevet enter
16 into a Separation Agreement?

17 A. As I sit here right now, I
18 believe that Mr. Tripp entered into a
19 Separation Agreement.

20 Q. With Brevet?

21 A. With a Brevet entity?
22 I am not sure which entity.

23 Q. Were you involved in the
24 negotiation of that agreement?

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 don't recall being involved in that
3 Negotiation Agreement.

4 Q. Has that agreement been
5 produced in this litigation?

6 A. As I sit here right now, I
7 don't have a -- I don't know.

8 Q. Do you know where you have a
9 copy -- do you have a copy of that
10 agreement that you can locate?

11 A. As I sit here right now, I
12 don't have a copy and -- and, um, to the --
13 to the extent that such a document exists
14 because I said I don't know whether or not
15 it exists, but I think it does. If it
16 exists and it hasn't been produced, I'm
17 sure -- I don't know.

18 Q. What was that, if it has not --
19 if it exists --

20 A. If counsel says it's okay, you
21 know, it's -- I don't make the decisions on
22 production.

23 Q. Okay. Where would you -- where
24 would you go to look for a copy of that
25 agreement, if it did exist?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 would ask our HR Department.

4 Q. Okay. Are you prepared to do
5 that for us?

6 MR. SOLOMON: We will take it
7 under advisement.

8 MR. CYRULNIK: Okay.

9 Q. Do you know whether Mr. Tripp's
10 separation terms, whether it was
11 memorialized in any agreement or not
12 deviated from the amounts that were
13 provided for in the LLC Agreements?

14 A. As I sit here right now, I
15 don't know.

16 Q. Do you have -- can you give me
17 any estimate as to how much Brevet has paid
18 Mr. Tripp, pursuant to the terms of his
19 departure whether it's a Separation
20 Agreement or otherwise from Brevet,
21 cumulatively?

22 A. As I sit here right now, I
23 don't know.

24 Q. Do you know if it was more or
25 less than \$10 million?

1 MARK CALLAHAN

2 A. As I sit here right now, I

3 would -- I don't know. [REDACTED] [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

5 Q. But you don't know?

6 A. I don't know.

7 Q. How about [REDACTED] [REDACTED] do you
8 know whether it's cumulatively over the
9 course of five or ten-year period if it was
10 more or less than [REDACTED] [REDACTED] that Mr.
11 Tripp received pursuant to the terms of his
12 Separation Agreement?

13 A. As I sit here right now, I
14 still don't know what he was paid, but [REDACTED]
15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] is, you
16 know, in the archeveche (sic) absurd range.

17 Q. So, is it your testimony that,
18 you know, it was [REDACTED] [REDACTED] [REDACTED] or
19 that you're not sure?

20 A. As I sit here right now, my
21 testimony would be both: [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

24 Q. But you're not certain that it
25 was less than [REDACTED] [REDACTED] [REDACTED] or you are

1 MARK CALLAHAN

2 certain that it was less than [REDACTED] [REDACTED]

3 MR. SOLOMON: I object to the
4 question.

5 A. As I sit here right now, I
6 don't know how much Mr. Tripp has been
7 paid.

8 Q. Do you know whether it was [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED]

10 A. As I sit here right now, I
11 don't know how much Mr. Tripp has been
12 paid.

13 Q. Understood.

14 Do you know whether or not --
15 yes or no, do you know whether it was [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED]

17 MR. SOLOMON: I object to the
18 question.

19 A. As I sit here right now, since
20 I don't know how much he's been paid, I
21 can't comment as to whether or not it was
22 above or below any number.

23 Q. Okay, thanks.

24 At the time that you -- that
25 we're looking at here right at this meeting

1 MARK CALLAHAN

2 February of 2016, had you -- had Brevet
3 concluded that Paul Iacovacci had breached
4 any provision of the LLC agreements?

5 A. As I sit here right now, I
6 don't recall this meeting and I don't
7 recall any discussions around the
8 agreement.

9 Q. Do you recall discussing with
10 anybody, Mr. Monticciolo included, the
11 possibility of terminating Mr. Iacovacci
12 rather than acceding to a withdrawal,
13 retirement or other departure from Brevet?

14 A. As I sit here right now --

15 Q. Um-hum?

16 A. -- with respect to the timing
17 that you are talking about, I don't recall
18 any discussions about the termination of
19 Mr. Iacovacci.

20 Q. When was the first time that
21 you discussed with anybody the point of
22 terminating Mr. Iacovacci?

23 A. As I sit here right now, my
24 recollection is that that would have been
25 in October of 2016.

1 MARK CALLAHAN

2 Q. And was it your idea?

3 A. As I sit here --

4 MR. SOLOMON: I object to the
5 form of the question.

6 A. As I sit here right now, I
7 don't recall whose idea it was, um, except
8 that it was ultimately a recommendation
9 from counsel.

10 Q. Okay. Do you know whether --

11 MR. CYRULNIK: Withdrawn.

12 Q. In sum or substance or in words
13 or in substance, at any point in 2016,
14 prior to October, did somebody at Brevet
15 communicate that Brevet might be better off
16 terminating Mr. Iacovacci rather than
17 allowing him to leave without a termination
18 and thereby be entitled to whatever rights
19 the LLC Agreements provided him?

20 A. As I sit here right now, I
21 don't recall any conversations about the
22 termination of Mr. Iacovacci related to
23 money. They were related to his, um, acts
24 and misdeeds against all the companies.

25 Q. We will talk about those.

1 MARK CALLAHAN

2 But, so, it's your sworn
3 testimony that nobody, you, Mr. Monticciolo
4 anybody else on the Brevet side, nobody
5 ever said, "hey, maybe we're better off
6 terminating Mr. Iacovacci's employment
7 rather than allowing him to withdraw or
8 retire or depart the company triggering
9 some tail payments under the LLC
10 Agreements;" is that correct?

11 A. No. As I sit here right now, I
12 don't recall any conversations of that
13 kind.

14 Q. Is it possible those
15 conversations happened?

16 MR. SOLOMON: I object to the
17 form of the question.

18 A. As I sit here right now, I
19 don't recall any -- any such conversations
20 happening.

21 Q. That, I understand.

22 My question is: Is it possible
23 that those conversations happened, but you
24 just don't recall them right now?

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 don't believe those conversations happened
3 -- I don't believe they happened with me.

4 Q. You don't believe that you were
5 involved in any such conversations?

6 A. As I sit here right now, I
7 don't believe I was involved in any such
8 conversations.

9 Q. And you don't know one way or
10 the other whether those conversations
11 happened outside of your presence?

12 A. As I sit here right now, I
13 don't know how I would know whether or not
14 a conversation happened that I wasn't privy
15 to.

16 Q. Well, somebody can tell you
17 about a conversation, right?

18 A. But as I sit here right now, if
19 they told me about a conversation then I
20 would -- that would be a conversation in
21 and of itself.

22 Q. Okay. Let's take a look at --

23 MR. CYRULNIK: Let's introduce
24 this next exhibit. Hold on one
25 second.

1 MARK CALLAHAN

2 Can we go off the record for
3 one moment just to address a
4 technical issue?

5 THE VIDEOGRAPHER: Off the
6 record at 2:17.

7 (Whereupon, a short recess was
8 taken.)

9 THE VIDEOGRAPHER: We are on
10 the record at 2:21.

11 Thank you.

12 Q. Mr. Callahan, do you recall
13 having a discussion with Mr. Iacovacci in
14 February of 2016 about a prospective
15 Separation Agreement?

16 A. As I sit here right now, I
17 recall having a conversation as you
18 discussed earlier with Mr. Iacovacci
19 sometime after that January 20th date that
20 we previously talked about.

21 Q. And do you recall Mr. Iacovacci
22 telling you that he didn't think a
23 Separation Agreement was necessary because
24 the LLC Agreements already address his
25 withdrawal from the company?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 recall Mr. Iacovacci failing to consider
4 that he was also an employee, which thus
5 necessitated a Separation Agreement, to
6 ensure that the -- to ensure that we were
7 capturing all aspects of the relationship.

8 Q. What was the basis for your
9 view that because Mr. Iacovacci was also an
10 employee, a Separation Agreement was
11 necessary and the LLC agreements were not
12 sufficient to accommodate his prospective
13 departure from the company?

14 A. As I sit here right now, I
15 believe the basis was a lawyer's
16 recommendation.

17 Q. Okay. Do you recall discussing
18 that issue with your attorney prior to
19 speaking with Mr. Iacovacci?

20 MR. SOLOMON: Hold on --

21 THE COURT REPORTER: I can't
22 hear you, sir.

23 MR. SOLOMON: I said, I object
24 to the question. I don't know if I
25 want him to go further than what the

1 MARK CALLAHAN

2 witness has already told Mr.

3 Cyrulnik.

4 Q. Well, I am just asking whether

5 or not you recall having the conversation

6 before you had the conversation with

7 Mr. Iacovacci.

8 MR. SOLOMON: You can answer

9 that, over objection.

10 A. As I sit here right now, I

11 don't recall the timing of conversations

12 from more than five years ago.

13 Q. You would agree with me that if

14 you did not have a conversation with a

15 lawyer prior to speaking to Mr. Iacovacci

16 about this topic that the basis for your

17 telling Mr. Iacovacci that he needed a

18 separation agreement couldn't possibly have

19 been the counsel recommendation, right?

20 MR. SOLOMON: I object to the

21 question.

22 Q. Mr. Callahan?

23 A. As I sit here right now?

24 Q. Yes.

25 A. My recollection is that --

1 MARK CALLAHAN

2 sorry?

3 Q. Yes. I am asking you based on
4 your understanding right now.

5 A. As I sit here right now, my
6 recollection is that -- that -- that --
7 that -- that general advice from counsel is
8 something that we'd received well before
9 Mr. Iacovacci.

10 Q. Well, before your meeting --
11 your conversation with Mr. Iacovacci you
12 mean?

13 A. As I sit here right now, my
14 understanding is that counsel had, you
15 know, legal advice and had recommended that
16 we always have Separation Agreements.

17 Q. Did you take the same position
18 when Mr. Tripp informed you he was
19 intending to depart Brevet?

20 A. As I sit here right now, I
21 don't know.

22 Q. Well, why -- why -- why don't
23 you know? Why would you have ha
24 potentially a different position vis-à-vis
25 Mr. Tripp's departure and Mr. Iacovacci's

1 MARK CALLAHAN

2 departure?

3 A. As I sit here right now, I can
4 recall that I was not involved in Mr.
5 Tripp's departure.

6 Q. So, the reason why you're not
7 sure whether or not the same position was
8 taken with respect to Mr. Tripp was because
9 you weren't consulted with respect to
10 Mr. Tripp's departure?

11 Is that -- is that a fair
12 summary of what you just explained to me?

13 A. As I sit here right now, I
14 don't recall what happened with respect to
15 Mr. Tripp's departure.

16 Q. Do you know one way or the
17 other whether you were consulted with
18 respect to Mr. Tripp's departure and
19 whether he needed a Separation Agreement?

20 A. As I sit here right now, I
21 don't recall whether I was or was not
22 consulted with respect to Mr. Tripp's --

23 Q. Fair to say that if you had
24 been consulted with respect to Mr. Tripp,
25 your view was that you need a Separation

1 MARK CALLAHAN

2 Agreement to consummate a departure?

3 MR. SOLOMON: And I object to
4 the question.

5 A. As I sit here right now, my
6 recollection is that there was a large gap
7 between the dates that we're talking about
8 with respect to Mr. Tripp and
9 Mr. Iacovacci's departures. And my
10 recollection is that the legal advice
11 pursuant to Separation Agreements came
12 after Mr. Tripp's departure.

13 Q. I see. Do you know whether the
14 legal advice that you're thinking of came
15 in connection with a particular
16 individual's departure from Brevet?

17 A. As I sit here right now, I
18 don't know.

19 Q. Did anybody else -- did any
20 other members of the Brevet, LLCs depart
21 during your time there?

22 And by "else," I mean -- I am
23 referring to other than Mr. Tripp or
24 Mr. Iacovacci.

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 don't believe any other members departed
3 those two LLCs.

4 Q. So, just to go back to the
5 conversation that we were talking about a
6 couple of minutes ago: So, I think I
7 understood your testimony to be that the
8 position that you were taking vis-a-vis a
9 separation agreement with Mr. Iacovacci was
10 fueled by the fact that he was also an
11 employee in addition to being a member of
12 the LLCs; is that right?

13 A. As I sit here right now, my
14 recollection is that what was done was on
15 the advice of Counsel.

16 Q. That I understand. I asked a
17 different question.

18 My question was, I want to get
19 back into the discussion you had with
20 Mr. Iacovacci.

21 I understood you to tell me
22 that your position vis-a-vis a Separation
23 Agreement that you had communicated to
24 Mr. Iacovacci during the conversation was
25 motivated by the fact Mr. Iacovacci didn't

1 MARK CALLAHAN

2 appreciate that because he was also an
3 employee, a Separation Agreement became
4 necessary.

5 Am I understanding your
6 testimony, correctly?

7 A. As I sit here right now, it --
8 it -- it's my recollection that counsel was
9 looking for a Separation Agreement.

10 Q. But is it your recollection
11 that the reason you told Mr. Iacovacci a
12 separation agreement was necessary was
13 because he was also an employee?

14 MR. SOLOMON: Objection.
15 Misstates the testimony.

16 Q. Did I misstate your testimony,
17 Mr. Callahan?

18 A. Ask the question again, please.

19 Q. You communicated during the
20 call that a Separation Agreement was also
21 necessary because he was an employee,
22 correct?

23 A. As I sit here right now, I
24 don't recall the contents of that
25 conversation.

1 MARK CALLAHAN

2 Q. Do you recall having a
3 discussion about a Separation Agreement?

4 A. As I sit here right now, I
5 don't recall the contents of that
6 conversation.

7 Q. Didn't you tell me about ten
8 minutes ago that you recalled having a
9 conversation and that you pointed out to
10 Mr. Iacovacci that he was also an employee
11 and that that had something to do with the
12 Separation Agreement?

13 MR. SOLOMON: I object to the
14 question. It misstates the
15 testimony.

16 A. As I sit here right now, I
17 think I was responding to a hypothetical
18 question from you as to why I would have
19 done something, I don't believe and I'm
20 sorry if I did relayed that that was
21 definitively what happened on that call.

22 Q. Okay. So, you have no
23 recollection, sitting here right now, you
24 have no recollection of discussing with
25 Mr. Iacovacci the fact that he was also an

1 MARK CALLAHAN

2 employee and that the fact that he was also
3 an employee meant that he should have a
4 Separation Agreement instead of just
5 relying on the LLC agreements, you have no
6 recollection of that?

7 A. As I sit here right now, I have
8 no specific recollection with respect to
9 the conversation with Mr. Iacovacci in, I
10 think I believe you said in February of
11 2016.

12 Q. How many Separation Agreements
13 has Brevet entered into over the last say
14 five years?

15 A. As I sit here right now, I
16 don't know.

17 Q. Do you think there were many?

18 A. I don't know --

19 MR. CYRULNIK: Let me withdraw
20 that.

21 Q. Let me ask you this: Can you
22 think of any Separation Agreements that you
23 are aware of Brevet having entered into in
24 the last five years?

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 can't tell you any one specific definitive
3 Separation Agreement. However, I know
4 there to be Separation Agreements. It is
5 not my -- that is not something -- that is
6 something that is handled by HR at this
7 point.

8 Q. Understood.

9 Do you know one way or the
10 other whether you would characterize
11 Separation Agreements as a standard
12 practice at Brevet for departing employees?

13 A. As I sit here right now, I
14 believe that it is a standard practice for
15 Brevet employees.

16 Q. But you can't think of any
17 specific ones that were specifically
18 entered into within the last five years?

19 A. As I sit here right now, I
20 can't speculate to something definitive as
21 there was definitively an agreement with
22 person X without having that document in
23 front of me to confirm.

24 I would assume that it exists,
25 but you're asking me if I definitively

1 MARK CALLAHAN

2 know, and as I sit here right now, without
3 the document in front of me to review, I
4 don't know whether or not it definitively
5 exists.

6 Q. Okay. Did you express concerns
7 to Mr. Iacovacci about the effect that his
8 departure from the company might have on
9 Brevet either in terms of how it would be
10 perceived by investors or the market,
11 generally?

12 A. As I sit here right now, I
13 don't recall any -- any conversations um,
14 regarding um, investors caring about
15 Mr. Iacovacci's departure. I -- I --
16 knowing -- knowing the environment at that
17 point in time, it was highly unlikely that
18 any investors would care.

19 Q. Why is that?

20 A. As I sit here right now, my
21 recollection is that Mr. Iacovacci was --
22 was not involved in the origination of the
23 larger opportunities at Brevet.

24 Q. At what point in time are you
25 referring to?

1 MARK CALLAHAN

2 A. I guess, as I sit here right
3 now, I believe it would be 2015 and 2016.

4 Q. So, Mr. Iacovacci was involved
5 in the larger transactions sourcing the
6 larger transactions at Brevet up until
7 2015.

8 Is that -- am I understanding
9 you correctly?

10 A. As I sit here right now, I
11 believe Mr. Iacovacci's overall production
12 declined over time. So, I believe -- I
13 believe that you are talking about 14 being
14 better than 15. I would agree with that's
15 probably the case, but I don't specifically
16 recall.

17 Q. Well, I -- I heard you say that
18 in 2015 and '16 he wasn't involved in the
19 larger transactions. I'm just asking
20 whether he was involved in larger
21 transactions in 2014, in your view.

22 A. As I sit here right now, I
23 think I said larger opportunities as
24 opposed to --

25 Q. Okay.

1 MARK CALLAHAN

2 A. -- larger transactions. And --
3 and by opportunities, it's more along the
4 lines of -- of setting up of platforms and
5 subsidiaries focussed on flow originations.

6 Q. What -- can you explain what
7 you mean by that, the distinction between
8 opportunities and transactions?

9 A. As I sit here right now, in
10 this context, I'd say a transaction is just
11 an individual transaction and I view an
12 opportunity as sort of a -- as a sector
13 opportunity.

14 Q. I see. Were there many
15 different sectors that you were expanding
16 into in 2015?

17 A. As I sit here right now, I
18 recall that there were sectors that we were
19 focused on in 2015 and I don't recall which
20 sectors they were at that point in time.

21 Q. What were the bigger sectors or
22 the bigger opportunities that you were
23 involved in in 2015 and '16?

24 A. You know, as I sit here right
25 now, I don't recall specifically which

1 MARK CALLAHAN

2 sectors we were in. I'd have to go and
3 look at the assets that we owned at that
4 point to determine what sectors they were
5 in.

6 Q. So, you don't recall what
7 sectors you were in, but you do recall that
8 Mr. Iacovacci was not involved in any of
9 the big ones?

10 A. As I sit here right now, I
11 recall that -- that Mr. Iacovacci wasn't
12 involved in opportunities in general,
13 period. He was more involved in one off
14 transactions.

15 Q. And for what period of time is
16 that accurate, as of when did you view him
17 as being involved more in one off
18 transactions than in opportunities?

19 A. As I sit here right now, I
20 don't recall that -- as I sit here right
21 now, I guess Paul may have been --
22 Mr. Iacovacci might have been involved in
23 opportunities prior to 2010, but I don't --
24 I don't recall specifics.

25 Q. But for the most part,

1 MARK CALLAHAN

2 post-2010, you viewed Mr. Iacovacci as
3 being involved in one off transactions
4 rather than in larger opportunities; is
5 that fair?

6 A. As I sit here right now, my
7 recollection is that Mr. Iacovacci was
8 involved in -- in -- in one off transaction
9 opportunity -- transactions.

10 Q. And when you say one off
11 transactions, does that speak to their
12 profitability, the profitability of that
13 transaction?

14 A. As I sit here right now, I
15 don't believe I made any -- I don't think
16 there's any -- I haven't made any comments
17 about profitability.

18 Q. How about just the sheer size
19 of the financing? Does -- does the fact
20 that you source a one off opportunity
21 versus being involved -- sorry, one off
22 financing or transaction versus being
23 involved in an opportunity, does that speak
24 one way or the other as to whether or not
25 that your involvement is in the larger

1 MARK CALLAHAN

2 transactions in which Brevet engaged?

3 A. As I sit here right now, I
4 don't think I talked about larger
5 transactions.

6 Q. Yeah, I don't think you did
7 either. I'm just asking you the question.
8 I am asking you whether not your comments
9 distinguishing between opportunities and
10 one off transactions has anything to do
11 with the magnitude or the profitability of
12 a transaction. I'm not suggesting that you
13 did address that already, I'm asking you
14 the question because I don't think you did
15 address it.

16 A. As I sit here right now, I
17 don't believe there's a direct link to
18 profitability. It is more of an indirect
19 link.

20 Q. And how does the indirect link
21 work?

22 A. As I sit here right now, my
23 recollection is that if you do a series of
24 transactions, one off versus a series of
25 transactions within a -- within an

1 MARK CALLAHAN

2 opportunity, there is more demand for
3 investor capital to do the latter.

4 Q. Okay.

5 A. More investor capital you end
6 up having the more -- theoretically, the
7 more profitable that you become. Typically
8 in an opportunity, your -- your expenses
9 are cost of originating is typically lower
10 as well and therefore it -- it -- it ends
11 up being ultimately more profitable.

12 Q. Got it.

13 To be clear: Your testimony
14 under oath is that you don't recall ever
15 telling Mr. Iacovacci that you were
16 concerned about how investors might react
17 to his departure; is that right?

18 A. As I sit here right now, I
19 don't recall telling Mr. Iacovacci that I
20 was concerned about -- concerns that
21 investors might have.

22 Q. And separate and apart from
23 whether you have a specific recollection of
24 having told him that, my next question is
25 slightly different: Sitting here right

1 MARK CALLAHAN

2 now, can you tell me definitively that you
3 did not express any such concerns to
4 Mr. Iacovacci, that is concerns about how
5 investors would react or might react to his
6 departure from Brevet?

7 A. As I sit here right now, I
8 can't tell probably anything of definitive
9 about what happened five and a half years
10 ago, but that in particular item would be
11 highly unlikely, just given -- given the
12 circumstances.

13 Q. Highly unlikely, but you're not
14 certain that didn't happen.

15 Is that a fair description of
16 your bottom line?

17 A. As I sit here right now, I'm
18 saying that I don't know how anybody can be
19 certain about anything that happened five
20 and a half years ago.

21 Q. Well, I mean, are you really
22 not certain about anything that happened
23 five and a half years ago; for example, are
24 you not certain that Mr. Iacovacci didn't
25 definitively communicate to you that he was

1 MARK CALLAHAN

2 retiring in January of 2016?

3 MR. SOLOMON: I object to the
4 question.

5 A. As I sit here right now, there
6 are -- there are likely things that I could
7 be definitive about with respect to
8 something that happened in a conversation
9 five and a half years ago. But, you know,
10 I don't recall what you were asking, but --

11 Q. Okay. Well, the question that
12 I was asking you about whether or not you
13 communicated to Mr. Iacovacci concerns
14 about how investors might react to his
15 departure, is that one of those things that
16 you cannot be definitive about or is that
17 one of those things that you can be
18 definitive about?

19 MR. SOLOMON: Asked and
20 answered several times, and I object
21 to the question.

22 A. Yeah. As I sit here right now,
23 I still -- I still find it difficult to say
24 anything definitive about a short
25 conversation from five and a half years

1 MARK CALLAHAN

2 ago.

3 Q. Fair enough.

4 (Whereupon, e-mail dated
5 2/12/2016 was marked as Plaintiff's
6 Exhibit 9 for identification as of
7 this date by the Reporter.)

8 Q. Let's take a look at Exhibit 8.
9 I'm sorry, Exhibit 9. Can you pull that
10 up? That's an e-mail that is dated
11 February 12th of 2016. It's from your --
12 from you to Doug Monticciolo with the
13 subject line: Paul update.

14 Do you see that?

15 (Witness reviews document.)

16 MR. SOLOMON: We don't have it
17 yet.

18 A. Not yet.

19 Q. If you can take a moment to
20 review --

21 MR. SOLOMON: I said not yet.

22 MR. CYRULNIK: Oh.

23 MR. SOLOMON: Exhibit 9 --
24 Exhibit 9 is on the screen.

25 (Witness reviews document.)

1 MARK CALLAHAN

2 Q. Let me know when you've taken a
3 look at that document, and then I will
4 follow up with some specific questions.

5 A. Okay. I have read it.

6 Q. Okay. Does this refresh your
7 recollection about the conversation that I
8 was asking you questions a few moments ago?

9 MR. SOLOMON: I object to the
10 question.

11 A. As I sit here right now, it
12 doesn't refresh my memory in the specific
13 contents of that conversation.

14 Q. Well, does it refresh your
15 general recollection that you did in fact
16 have a general conversation with Paul
17 Iacovacci sometime prior to February 12th
18 of 2016 at 12:24 p.m. in which you
19 discussed some things relating to his
20 potential departure from the company?

21 (Witness reviews document.)

22 A. As I sit here right now,
23 looking at this e-mail, it -- it looks like
24 I had a conversation with Paul, summarized
25 by this e-mail (indicating.)

1 MARK CALLAHAN

2 Q. Any reason to doubt the
3 accuracy of your summary?

4 (Witness revise document.)

5 A. As I sit here right now, I
6 don't believe there is any reason to doubt
7 the accuracy of the summary.

8 Q. Okay. You wrote: Paul was
9 thinking --

10 MR. CYRULNIK: Third bullet
11 point.

12 Q. -- "Paul was thinking that he
13 would be an employee, to help out, until
14 the end of March."

15 Do you see that?

16 (Witness reviews document.)

17 A. I see that bullet.

18 Q. During your conversation,
19 Mr. Iacovacci communicated to you that he
20 was intending to leave Brevet but was
21 willing to stay on until the end of March,
22 to help out; isn't that right?

23 (Witness reviews document.)

24 A. As I sit here right now,
25 looking at just that bullet, I -- I think

1 MARK CALLAHAN

2 you have to look at the entire e-mail
3 context.

4 This is -- he is always looking
5 to have -- essentially to have his cake and
6 eat it, too.

7 He would like to have -- to be
8 an employee for as long as possible, under
9 the auspices of helping us out, meanwhile,
10 he gets paid and he wants benefits for even
11 longer, while there is a -- an ongoing
12 negotiation of the -- the separation
13 agreement.

14 Q. So, is the answer to my
15 question: Yes?

16 MR. SOLOMON: I object to the
17 question.

18 A. Can you repeat the question,
19 please?

20 MR. CYRULNIK: Can the Court
21 Reporter read the question -- my
22 question, please?

23 THE COURT REPORTER: Sure.

24 (Whereupon, the referred to
25 question was read back by the

1 MARK CALLAHAN

2 Reporter.)

3 A. As I sit here right now,
4 reading that bullet, it indicates -- it
5 says that "Paul is thinking that he would
6 be an employee, to help out until the end
7 of March."

8 It -- it -- it's specific, with
9 respect to him being an employee until the
10 end of March.

11 What ended up happening is that
12 he continued to extend things out and got
13 paid for much longer.

14 Q. Yeah. And I understand that we
15 can talk about what ended up happening. I
16 am, right now, focusing on what was
17 communicated to you, by Mr. Iacovacci,
18 during the phone conversation that
19 pre-dated this e-mail on February 12th.

20 During that phone conversation,
21 Mr. Coe -- Iacovacci communicated to you,
22 Mr. -- Mr. Callahan, that "he was going to
23 be an employee, to help out until the end
24 of March, not beyond that;" correct?

25 MR. SOLOMON: I object to the

1 MARK CALLAHAN

2 question.

3 States it wrong.

4 A. As I sit here right now,
5 looking at this, I don't -- I don't see
6 that to be correct.

7 I believe that this is -- this
8 is part of an ongoing discussion that is --
9 that is relating to him, potentially, no
10 longer being an employee.

11 Q. When you say "potentially, no
12 longer being an employee," are you,
13 intentionally, trying to avoid using the
14 words: "Leaving Brevet"?

15 MR. SOLOMON: I don't
16 understand.

17 I object to the question.

18 Q. Mr. Callahan, you can answer
19 the question.

20 A. As I sit here right now, I -- I
21 wasn't, specifically, trying to avoid any
22 language.

23 Q. Okay. And so, my question to
24 you is: You -- you -- you have testified,
25 as recently as a couple of answers ago,

1 MARK CALLAHAN

2 that, typical, Paul, was trying to stay on,
3 as an employee, for as long as he could.

4 But I am reading your words and
5 these are your words on the page; right?

6 (Witness reviews document.)

7 A. This is an e-mail that I wrote.

8 Q. Right.

9 A. Concerning a conversation, with
10 Paul, at what -- the words that I wrote
11 may, or may not, be what Paul is saying, as
12 opposed to words that I came up with.

13 Q. Well, you weren't sending this
14 to Paul; right? You were sending this to
15 your boss, Doug Monticciolo; right?

16 (Witness reviews document.)

17 A. That is correct.

18 This is an e-mail to Douglas
19 Monticciolo.

20 Q. And you -- you selected the
21 words that you were going to use, to
22 communicate to Mr. Monticciolo, the
23 substance of your conversation with
24 Mr. Iacovacci; right?

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 don't recall how I selected words to put
3 into this e-mail.

4 But as I look at this, right
5 now, it looks to be me -- especially the
6 early bullet points, me regurgitating what
7 Paul has told me.

8 Q. So, fair -- fair -- fair to
9 conclude that Paul did tell you that he was
10 thinking that he would be an employee to
11 help out, until the end of March; right?

12 A. As I sit here right now, as
13 part of the discussion, Paul communicated
14 that he was looking for salary
15 compensation, at Brevet Holdings, until the
16 end of March, and benefits beyond that.

17 Q. Okay. And the end of March, was
18 only a month and a half after the
19 conversation; right?

20 He wasn't looking to stay on
21 for many, many months, as an employee; is
22 that correct?

23 A. As I sit here right now, I
24 don't know what he was expecting.

25 Q. Well, fair enough.

1 MARK CALLAHAN

2 If you were drawing a
3 distinction as to what -- what he was
4 actually expecting as to what he was
5 telling you what he was expecting, you
6 would agree with me that he told you that
7 he was not expecting, for example, for
8 Brevet to cover benefits beyond the period
9 of his employ; is that correct?

10 MR. SOLOMON: I object to the
11 question.

12 It misstates the document and
13 it misstates the witness' testimony.

14 MR. CYRULNIK: I am certainly
15 not misstating your testimony because
16 I am not trying to characterize your
17 testimony.

18 Q. I am asking you whether or not
19 you would agree that Mr. Iacovacci
20 communicated to you that he was not
21 expecting Brevet to cover his benefits past
22 the period that he was employed by Brevet.

23 (Witness reviews document.)

24 A. As I sit here right now,
25 reading the bullet, it says: "He would

1 MARK CALLAHAN

2 like it if we paid for benefits beyond then
3 and he would still help out but he was not
4 expecting this. For instance: Parenthetical
5 (us to cover benefits.) "

6 Q. Right.

7 That was the bullet point that
8 I was referring to.

9 Mr. Iacovacci told you that he
10 was not expecting Brevet to cover his
11 benefits past the period that he was
12 employed; is that correct?

13 A. I would say it's a big -- I
14 believe that I just -- just answered that.

15 Q. How?

16 A. He would like us to pay for
17 benefits beyond that but he is not
18 expecting this.

19 Q. I am focussing on the second
20 half. I am not asking about what he would
21 have liked. I am asking what he
22 communicated to you about his expectations.

23 A. That is what I just answered.

24 Q. So, is the answer to my
25 question: Yes? He communicated to you that

1 MARK CALLAHAN

2 is not expecting that Brevet would cover
3 his benefits past the period of his employ?

4 MR. SOLOMON: Object to the
5 question.

6 A. As I sit here right now, with
7 respect to this one e-mail and this one
8 conversation, which was one part of a
9 negotiation over a long period of time be
10 -- between counsel and a -- many other
11 discussions, where many things that changed
12 overtime.

13 This, obviously, being one of
14 them because he happily expected --
15 accepted compensation and benefits for many
16 months, beyond this.

17 Q. Do you view that happy
18 acceptance of compensation and benefits
19 beyond March as inconsistent with what he
20 communicated to you, on this phone call,
21 that is referenced, in Exhibit 9?

22 (Witness reviews document.)

23 A. You're asking whether or not
24 him -- in -- in -- in some discussion
25 saying that he'd like to be an employee

1 MARK CALLAHAN

2 through the end of March and other
3 discussions and other actions, where he
4 continued to get paid well beyond then, if
5 they are inconsistent with each other?

6 Q. I am asking you whether or not
7 his acceptance of salary and benefits past
8 the period of March is inconsistent with
9 what he communicated to you about him not
10 expecting Brevet to cover benefits past the
11 period of his employ, in your view?

12 A. As I sit here right now, I
13 don't know. I don't know what you mean by
14 that.

15 Q. You don't -- you don't
16 understand my question, you are saying?

17 Do you want me to rephrase?

18 A. I don't know what you mean by
19 "inconsistent."

20 Q. Well, I think you -- I think
21 your -- your wording was that "things
22 changed."

23 I want to understand why you're
24 saying that.

25 He didn't tell you, in this

1 MARK CALLAHAN

2 e-mail, that he did not want to accept
3 benefits beyond March. He actually told
4 you he would like to receive benefits
5 beyond March but that he was not expecting
6 Brevet to do so; correct?

7 (Witness reviews document.)

8 A. As I sit here right now, I
9 think -- you started that off by saying
10 that I said that I said that "things
11 change" and I don't believe -- I don't
12 think I said "things changed."

13 But what I said was that from
14 this point forward, there were a lot of
15 other discussions. It was -- it was an
16 ongoing process of discussions, with a lot
17 of different things being thrown out during
18 that time period. This being one of them,
19 where at that point in time, it looks like
20 Paul was thinking about being employed, to
21 help out, until the end of.

22 It doesn't say definitively
23 that it is done at that point. Well, it
24 may or may not be consistent, I -- I don't
25 know, to your earlier question. And it

1 MARK CALLAHAN

2 says: He would like it, if we paid for
3 benefits beyond that and he would still
4 help out but he is not expecting this.

5 Again, that is part of the
6 ongoing discussions that were happening
7 from -- from this point forward, through
8 counsel, is to, ultimately -- you know,
9 ultimately what happened.

10 Q. You say "from this point
11 forward through counsel."

12 Mr. Iacovacci was not
13 represented by counsel when he had a
14 discussion with you in February of 2015,
15 prior to this e-mail; correct?

16 MR. SOLOMON: Objection.

17 Calls for speculation.

18 Q. To your knowledge, was
19 Mr. Iacovacci represented by counsel prior
20 to you having a discussion with him --

21 A. As I say: As I sit here right
22 now, I believe he was represented by
23 counsel.

24 Q. What is the basis for that
25 belief?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 believe he had been -- engaged Mr. Weiss
4 well before this date.

5 Q. When do you believe he engaged
6 Mr. Weiss?

7 A. As I sit here right now, I
8 don't know.

9 Q. Well, it sounds like you had
10 some understanding because you testified it
11 was "well beyond this."

12 What is your best understanding
13 of when he engaged Mr. Weiss?

14 A. Well, as I sit here right now,
15 I believe it was prior to 2016.

16 Q. Do you believe that
17 Mr. Iacovacci engaged Mr. Weiss, to advise
18 him in connection with a departure from
19 Brevet before 2016?

20 Is that your testimony?

21 A. As -- as I sit here right now,
22 that is my belief.

23 Q. And what is the basis for your
24 belief that Mr. Iacovacci engaged counsel,
25 with respect to a prospective departure

1 MARK CALLAHAN

2 from Brevet prior to 2016?

3 Did he tell you that?

4 A. As I sit here right now, I
5 don't -- I don't believe he ever told me
6 that.

7 Q. Did someone else tell you that?

8 A. As I sit here right now, I
9 don't -- I don't know. I don't know. I
10 don't believe --

11 Q. Did you -- did you --

12 MR. CYRULNIK: Sorry.

13 I didn't mean to cut you off.

14 A. I don't -- I don't know, you
15 know, I -- as I sit here right now, I don't
16 know why I have that, um, belief.

17 I am happy to go back and go
18 back to documents, to try to figure out how
19 I have that belief.

20 But my belief is that he had
21 counsel prior to that point. And now,
22 whether or not he was -- is certainly --
23 certainly related to -- yeah. I don't know
24 what it's related to.

25 Q. Thanks for clarifying.

1 MARK CALLAHAN

2 So, you -- you -- you can tell
3 me you have the belief, you don't know the
4 basis for it?

5 A. As I sit here right now, I
6 don't recall what that basis is.

7 Q. Had you ever discussed, in any
8 way, shape or form, a prospective departure
9 of Paul Iacovacci from Brevet prior to
10 2016?

11 A. As I sit here right now, I
12 don't -- I don't recall.

13 Are you saying whether or not
14 Paul had -- Paul had broached de --
15 departing?

16 Q. Whether the subject matter of
17 Paul potentially leaving Brevet had ever
18 come up, prior to 2016?

19 A. As I sit here right now, I
20 don't recall.

21 Q. Okay. So, Mr. Iacovacci tells
22 you that he didn't think a separation
23 agreement was necessary because the LLC
24 agreements provided for the course of
25 action that would follow from his

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MARK CALLAHAN

withdrawal from the LLC's; is that correct?

MR. SOLOMON: Object.

I object to the question.

You're misstating the
testimony.

A. As I sit here right now, where
I don't recall the actual conversation, but
I can see the -- this e-mail.

Q. Okay. Well, based on what this
e-mail can trigger, in your memory, my
question is --

MR. CYRULNIK: I am getting to
the last bullet.

Q. -- where you retort to him that
he is also an employee.

And I am asking you to try to
remember, what you can, about what he
communicated to you, when you say here:
"He said that we probably don't need one,
referring to a separation agreement,
because our documents already address
this."

So, do you recall Mr. Iacovacci
telling you that the LLC agreements already

1 MARK CALLAHAN

2 address what happens, when a Member
3 withdraws, and so, you don't -- he doesn't
4 need to negotiate a separate separation
5 agreement with Brevet.

6 Do you recall Mr. Iacovacci
7 communicating that basic position, in words
8 or in substance, during the call that is
9 being summarized here?

10 A. As I sit here right now, I
11 still do not recall the call.

12 Q. Okay. And, then, you respond
13 that you thought the separation agreement
14 was necessary because he is not accounting
15 for the fact that he is -- in addition to
16 being a Member of the LLC's, he is also an
17 employee of Brevet Holdings; right?

18 MR. SOLOMON: I object.

19 You're misstating the document.

20 MR. CYRULNIK: I am not
21 misstating any document.

22 Thanks. I am --

23 MR. SOLOMON: You're asking for
24 his independant recollection?

25 MR. CYRULNIK: I am asking for

1 MARK CALLAHAN

2 Mr. Callahan's recollection of the
3 conversation that is referenced here,
4 based on whatever he is using to
5 refresh his memory, if he needs it.

6 The question again is:

7 Q. In response to Mr. Iacovacci
8 communicating to you that the LLC
9 agreements already provided for what needs
10 to occur, if he were to leave Brevet, as a
11 Member.

12 You pointed out to him that he
13 is also an employee and as a result of
14 that, you thought a separation agreement
15 was appropriate.

16 Is that a fair, general summary
17 of that exchange?

18 A. As I sit here right now, I
19 don't recall the contents of that
20 conversation.

21 Q. Okay. What did you mean when
22 you say: "We need to make sure that we do
23 everything right by our investors, on the
24 GP side"?

25 (Witness reviews document.)

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 don't recall what I meant five-and-a-half
4 years ago, when I said that.

5 Q. Well, reading your words now,
6 in writing, can you tell me what your best
7 understanding of what you meant was or is?

8 (Witness reviews document.)

9 A. As I sit here right now, it --
10 it looks like just trying to make sure that
11 everything is done properly.

12 Q. What do you mean by that?

13 A. As I sit here right now, it
14 probably would be whatever -- what the
15 lawyers are advising us to do.

16 Q. Are you telling me that the
17 responses that you had to Mr. Iacovacci, on
18 this phone call, were really responses that
19 were informed by the advice you had
20 received from attorneys prior to this phone
21 call?

22 A. As I sit here right now, I
23 don't recall whether or not I had any
24 discussions with attorneys, relating to
25 this, prior to this point in time.

1 MARK CALLAHAN

2 As we discussed previously, the
3 need for general -- general need for
4 separation, or Separation agreements, is
5 something that counsel generally had
6 discuss advised us of prior to this.

7 Q. Why were you reporting this all
8 to Mr. Callahan?

9 MR. SOLOMON: No.

10 I object to the question.

11 MR. CYRULNIK: Oh, I don't mean
12 that.

13 You're right.

14 Q. Why were you reporting this all
15 to Mr. Monticciolo?

16 MR. CYRULNIK: Thank you.

17 A. As I sit here right now, I
18 believe I was reporting this to Mr.
19 Monticciolo because he was the owner of
20 Brevet Holdings and a -- the largest Member
21 of each of the -- each of the LLC's.

22 Q. Did Mr. Monticciolo ask you to
23 have the call with Mr. Iacovacci?

24 A. As I sit here right now, I
25 don't recall whether or not Mr. Monticciolo

1 MARK CALLAHAN

2 asked me to have a conversation with
3 Mr. Iacovacci.

4 Q. Did Mr. Monticciolo ask you to
5 report back to him on any discussions you
6 had with Mr. Iacovacci?

7 A. As I sit here right now, I
8 don't recall whether or not Mr. Monticciolo
9 asked me to report back on any
10 conversations with Mr. Iacovacci.

11 Q. Would you characterize the
12 discussion you had with Mr. Iacovacci,
13 referenced here, as a friendly conversation
14 about his prospective departure from
15 Brevet?

16 A. As I sit here right now, I
17 still don't recall the specifics of this
18 conversation.

19 Q. You didn't tell Paul that you
20 were considering firing him during this
21 conversation, did you?

22 A. As I sit here right now, I
23 don't recall the specifics of the
24 conversation.

25 Q. So, you don't know one way or

1 MARK CALLAHAN

2 the other whether you informed Paul that
3 you were considering firing him during this
4 conversation?

5 A. As I sit here right now, I
6 would -- I would --

7 (Witness reviews document.)

8 A. I would venture that if that
9 had been discussed, it would have been
10 reported in the e-mail to Mr. Monticciolo.

11 Q. Okay. So, you don't think you
12 told that to Mr. Iacovacci; right?

13 A. As I sit here right now, I
14 don't know. But it is not in the summary
15 provided to Mr. Monticciolo.

16 Q. Did you tell Mr. Iacovacci that
17 you were going to contest his retirement or
18 withdrawal from the company in any way?

19 (Witness reviews document.)

20 A. As I sit here right now, I
21 don't recall the contents of the
22 conversation.

23 Q. Did you object to Mr. Iacovacci
24 sending out an e-mail to all of his
25 sourcing contacts, as he expressed to you

1 MARK CALLAHAN

2 during that phone call, based on the fourth
3 bullet point -- fifth bullet point of your
4 summary?

5 (Witness reviews document.)

6 A. As I sit here right now, I
7 don't recall the contents of the
8 conversation.

9 Q. So, you don't know one way or
10 the other?

11 A. As I sit here right now, all I
12 can do is read this e-mail. And it doesn't
13 say he is going to, it says "he would like
14 to send out an e-mail."

15 Q. You didn't put down, in the
16 bullet points, that you responded to him
17 that he should not do -- that he should not
18 do so; correct?

19 A. As I sit here right now,
20 looking at this e-mail, I don't see that in
21 the e-mail but I don't recall the contents
22 of the conversation, to know whether or not
23 that happened.

24 Q. Fair to say that if you had
25 responded that way, you, likely, would have

1 MARK CALLAHAN

2 communicated that in the summary to Mr.
3 Monticciolo; right?

4 A. As I sit here right now, I
5 think it's fair to say that these bullets
6 don't represent a hundred percent of what
7 was discussed on that call because it
8 rarely is the case that summaries are --
9 are a hundred percent inclusive of what was
10 discussed.

11 But I don't recall what else
12 was discussed.

13 Q. Yeah. My question was,
14 actually, the opposite: Was it -- would
15 you agree with me that it is fair to say
16 that had you responded to Mr. Iacovacci
17 that he should not be contacting his
18 sourcing contacts, you likely would have
19 put that in the e-mail summary to Mr.
20 Monticciolo; "yes" or "no"?

21 A. As I sit here right now, I
22 think I was responsive to the question:
23 That not everything is likely to have been
24 captured by this e-mail.

25 Q. Yeah. That would have been

1 MARK CALLAHAN

2 responsive to a question: Do you think
3 everything is captured by this e-mail?

4 My question was very specific.
5 I want you to know whether you agree with
6 me that had you responded to Mr. Iacovacci:
7 "I don't want you contacting any of your
8 sourcing contacts," you would have put that
9 in your e-mail summary to Mr. Monticciolo?

10 Do you agree with me that you
11 likely would have done so, if you said
12 that?

13 MR. SOLOMON: I will object to
14 the question.

15 A. As I sit here right now, I
16 don't know what I would have done
17 five-and-a-half years ago.

18 Q. Okay.

19 Do you recall a company
20 announcement, in February of 2016, that
21 Mr. Iacovacci would be retiring from the
22 company?

23 A. As I sit here right now, I
24 don't recall a company announcement
25 regarding that.

1 MARK CALLAHAN

2 Q. Do you recall a company
3 announcement about Mr. Iacovacci retiring
4 from Brevet at any point in time, in 2016?

5 A. As I sit here right now, I
6 don't recall any company announcement
7 regarding his retirement during 2016.

8 Q. Can you tell me one way or the
9 other whether or not such a company
10 announcement was made?

11 And I know you don't recall so
12 I just want to be clear: You don't know one
13 way or the other whether a company
14 announcement, with respect to Mr.
15 Iacovacci's retirement, was made, in
16 February of 2016; is that correct?

17 A. As I sit here right now?

18 Q. Yes.

19 A. I -- I don't -- I don't recall
20 whether a -- a retirement announcement was
21 made.

22 However, it would have been
23 unlikely to have announced that, without
24 determining what those parameters would
25 look like.

1 MARK CALLAHAN

2 Q. You don't recall but you think
3 it's unlikely it did happen; is that an
4 accurate summary of your answer?

5 A. Is that an inaccurate --
6 inaccurate summary?

7 Q. No.

8 MR. CYRULNIK: Sorry.

9 Q. Is that an accurate summary of
10 your answer?

11 A. That, I -- that, I don't
12 recall.

13 Q. That you don't know for certain
14 but that you suspect that it didn't happen?

15 A. That is correct.

16 Q. Okay. Do you recall taking away
17 Mr. Iacovacci's access to company servers?

18 A. Actually, when I say I don't --
19 to -- to the prior one, I don't recall. I
20 -- you know, it's that I don't know, you
21 know. It's not that I don't recall, not
22 that I don't know.

23 Q. What do you mean by that: Do
24 you know?

25 A. I don't recall whether or not

1 MARK CALLAHAN

2 that would have happened throughout 2016.

3 Q. And because you don't recall
4 you don't know; right?

5 A. And I am not -- I am not sure
6 what you're talking about, when you refer
7 to, as a "company announcement."

8 I believe that there were, you
9 know, it's very much a rumor mill of what
10 was going on, very much started by
11 Mr. Iacovacci, himself.

12 Q. It's your position that
13 Mr. Iacovacci started the rumor that he was
14 retiring?

15 A. To my recollection, that at
16 some point during the, um, during the
17 negotiation period of the separation
18 agreement, employees had been told by, um,
19 Mr. Iacovacci that he is -- he was retiring
20 as of some date.

21 Q. Why would Mr. Iacovacci tell
22 people that he was retiring and not retire?

23 A. As I sit here right now, I
24 can't explain anything that Mr. Iacovacci
25 has done.

1 MARK CALLAHAN

2 Q. Okay. I think you expressed
3 some lack of clarity as to what I was
4 referring to by a "company announcement" so
5 let me be clear and then, repeat the
6 question, just so we have a clear record,
7 Mr. Callahan.

8 By "company announcement," I
9 mean did anybody from Brevet --

10 MR. CYRULNIK: And I am
11 excluding Mr. Iacovacci.

12 Q. -- anybody from -- anybody from
13 Brevet, in a -- in the executive position,
14 communicating to other Members, employees,
15 investors that Mr. Iacovacci was retiring
16 from Brevet?

17 That is what I am referring to,
18 by company -- that is what I mean by
19 "company announcement."

20 So, with the benefit of that
21 clarification: Does your answer remain the
22 same?

23 A. As I sit here right now, I am
24 not aware of any -- any such announcements.

25 Q. You had weekly meetings at

1 MARK CALLAHAN

2 Brevet?

3 A. Is that a statement or a
4 question?

5 Q. Oh, sorry.

6 Almost everything I am doing is
7 a question.

8 Did you have weekly meetings,
9 at Brevet?

10 A. That we are -- as I recall, at
11 that time, there were -- there were, um,
12 likely weekly meetings.

13 But many other meetings, as
14 well.

15 Q. Understood.

16 Did you have Monday meetings,
17 does that ring a bell?

18 A. As I recall, there were
19 meetings on Monday mornings.

20 Q. A standing meeting every
21 Monday, obviously, with exceptions?

22 A. As I recall, there were
23 generally meetings on Monday mornings.

24 Q. Do you recall whether or not
25 the subject of Mr. Iacovacci retiring came

1 MARK CALLAHAN

2 up at any of those Monday meetings?

3 A. As I sit here right now, I -- I
4 don't recall and I don't believe the topic
5 of his retirement came up in those Monday
6 meetings.

7 Q. So, you both don't recall but
8 you don't believe that the topic came up in
9 any of the Monday meetings; is that what
10 you are testifying to?

11 A. As I sit here right now, I
12 believe that is what I just said.

13 Q. You took away Mr. Iacovacci's
14 access to company servers at some point in
15 2016; is that correct?

16 A. As I sit here right now, I
17 believe Mr. Iacovacci's access was
18 terminated in -- upon his termination, in
19 October of 2016.

20 Q. Is it your testimony that Mr.
21 Iacovacci's access to the company's servers
22 remain constant and unchanged up until
23 October of 2016?

24 A. As I sit here right now, it is
25 my understanding that his -- his access and

1 MARK CALLAHAN

2 what was the other word you used?

3 Q. I think "access" is fine. I
4 don't have the transcript in front of me
5 but "access."

6 A. I believe his "access" remained
7 unchanged.

8 I believe that there, perhaps,
9 was changeover of service providers, where
10 all employees had to reset up -- I am not a
11 technology guy. So, there is a changeover
12 time period so there may have been a time
13 when Paul, like all other employees, was
14 down during that transition.

15 Q. Apart from that, you're not
16 aware of any -- anybody authorizing the
17 reduction or restriction of Mr. Iacovacci's
18 access to the company servers prior to
19 October of 2016; is that correct?

20 A. As I sit here right now, I am
21 not aware of any circumstances where his
22 access to the servers was limited --
23 limited.

24 MR. CYRULNIK: We have been
25 going a little while.

1 MARK CALLAHAN

2 I want to keep our breaks
3 somewhat limited.

4 I want to go off the record.

5 THE VIDEOGRAPHER: Off the
6 record at 3:18.

7 This ends Media Unit Number 4.

8 (Whereupon, an off-the-record
9 discussion was held.)

10 THE VIDEOGRAPHER: We are on
11 the record at 3:25.

12 This marks the beginning of
13 Media Unit Number 5.

14 Thank you.

15 Q. Mr. Callahan, investors were
16 told, by Brevet, that Paul Iacovacci had
17 retired as of April 1, 2016; isn't that
18 right?

19 A. As I sit here right now, I
20 don't know whether that is the case.

21 Q. It's possible that it is?

22 A. As -- as I sit here right now,
23 I don't know what and when investors were
24 communicated.

25 I don't deal with investors,

1 MARK CALLAHAN

2 generally.

3 Q. Okay. Would communicating to
4 investors that Mr. Iacovacci had retired,
5 as of April 1, 2016, be inconsistent with
6 your recollection of what happened?

7 A. As I sit here right now, again,
8 given that I don't interact with investors,
9 to the -- to the -- for the most part, I --
10 I wouldn't have a view as to whether or not
11 it was consistent or inconsistent as --
12 that would be something that would be
13 better asked of people that deal with
14 investors.

15 Q. Why is that? Wouldn't --
16 wouldn't you know whether it was consistent
17 to communicate the retirement of an
18 individual, based on your review as to
19 whether that individual had, in fact,
20 retired?

21 A. As I sit here right now, I
22 don't know what and when information was
23 communicated to investors, whether
24 consistent or inconsistent. I don't know
25 what information was communicated.

1 MARK CALLAHAN

2 Q. That, I understand that and I
3 appreciate that piece of your testimony.

4 I am asking you to assume, for
5 purposes of this question, that investors
6 were told that Mr. Iacovacci had retired,
7 as of April 1, 2016.

8 If that happened, would that be
9 consistent, or inconsistent, with your
10 recollection of what transpired?

11 A. As I sit here right now, that
12 would be inconsistent with what transpired
13 because the -- Mr. Iacovacci wasn't
14 retired, he was still getting paid, still a
15 Member of the LLC's, still receiving
16 benefits.

17 Q. You're required to accurately
18 report things to investors and not to
19 provide them with false information; is
20 that right?

21 A. As I sit here right now, I
22 believe that providing, you know, best
23 efforts, to provide information, as
24 accurate as possible, to investors, is what
25 we endeavor to do.

1 MARK CALLAHAN

2 Q. Do you know who Mike Mahar is?

3 MR. CYRULNIK: M-A-H-A-R.

4 A. I do know who Mike Mahar is.

5 Q. And can you tell me who he is?

6 A. As -- as I sit here right now,
7 I recall that he was a former employee of
8 Brevet.

9 Q. Okay. And what was his
10 position, at Brevet, if you recall?

11 A. As I sit here right now, I
12 don't recall what his position was.

13 Q. Do you recognize the name [REDACTED]
14 [REDACTED] ?

15 MR. CYRULNIK: [REDACTED] [REDACTED]
16 [REDACTED]

17 A. As I sit here right now, I do
18 not recognize the name, [REDACTED] [REDACTED].

19 Q. Okay. Can you take a look at
20 Exhibit 10, please?

21 (Witness complies.)

22 MR. SOLOMON: Let me see.

23 THE WITNESS: It seems like
24 Number 13.

25 MR. SOLOMON: Pull it down just

1 MARK CALLAHAN

2 a -- that is 18 (indicating.)

3 Q. Do you have that pulled up?

4 MR. SOLOMON: "10" is on the
5 screen.

6 MR. CYRULNIK: Great.

7 Q. And Mr. Callahan, if you look
8 at the middle e-mail on the page, towards
9 the bottom, you will see that [REDACTED]
10 writes to Mr. Mahar, asking him to provide
11 "home addresses and approximate age for the
12 below Brevet management so that he can
13 complete background checks."

14 Do you see that?

15 (Witness reviews document.)

16 A. I see that, along with his
17 request for an in -- a non-NDA dec and a
18 fax sheet.

19 Q. Yep.

20 And you see the three people he
21 identified are yourself, Mr. Monticciolo
22 and Mr. Iacovacci?

23 (Witness reviews document.)

24 A. I see that.

25 Q. Okay. And do you see that Mr.

1 MARK CALLAHAN

2 Mahar responds, on behalf of Brevet, F --
3 last paragraph to mid-sentence, in his
4 e-mail: "FYI, Paul Iacovacci retired from
5 Brevet, as of April 1, 2016. Let me know
6 if you would still like to have his
7 details."

8 Do you see that?

9 (Witness reviews document.)

10 I see that statement.

11 Q. Was Mr. Mahar accurately
12 representing to [REDACTED] the state of
13 play, with respect to Mr. Iacovacci, in
14 this May 9th e-mail?

15 (Witness reviews document.)

16 A. As I sit here right now,
17 looking at this e-mail, it appears it was
18 not an accurate statement, as Mr. Iacovacci
19 was still employed by Brevet, as of the
20 date this have e-mail.

21 Q. Are you surprised that Mr.
22 Mahar was misrepresenting the state of
23 play, with respect to Mr. Iacovacci, in
24 writing?

25 MR. SOLOMON: I object to the

1 MARK CALLAHAN

2 question.

3 A. As I sit here right now, I -- I
4 am not surprised. I am not not surprised.

5 I -- I -- I -- there is not --
6 I guess I don't really feel anything.

7 Q. You're not surprised that Mr.
8 Mahar was, in writing, misrepresenting the
9 employment status of one of your
10 executives?

11 A. As I sit here right now, I am
12 -- I am surprised and disappointed that
13 this information would have gone to an
14 investor.

15 Q. And --

16 A. And I would want -- and I would
17 want to go and determine where that
18 information came from.

19 Q. That was my next question.

20 A. I am still talking.

21 My concern being whether or not
22 that information originated from
23 Mr. Iacovacci, himself.

24 Q. I see.

25 Any idea where Mr. Mahar got

1 MARK CALLAHAN

2 the information that he put down, in
3 writing, to [REDACTED] [REDACTED] that Mr. Iacovacci
4 had retired?

5 A. As I sit here right now, I
6 would -- um --

7 (Witness reviews document.)

8 A. I would believe that
9 Mr. Iacovacci was the source of that
10 information.

11 Q. What is the basis for that?

12 A. As I sit here right now, my
13 recollection is that Mr. Iacovacci was
14 talking to a lot of people at Brevet.

15 Q. Do you recall Mr. Iacovacci
16 talking to people at Brevet about his
17 retirement?

18 A. As I sit here right now, I
19 don't recall Mr. Iacovacci talking to
20 people. I recall people commenting that
21 Mr. Iacovacci was calling them.

22 Q. Calling them and telling them
23 what?

24 A. As I sit here right -- as I sit
25 here right now, my recollection is that

1 MARK CALLAHAN

2 they were -- that he was telling them about
3 retirement.

4 Q. So, you recall people
5 confirming for you, at Brevet, that
6 Mr. Iacovacci had called them and told them
7 that he had retired?

8 A. As I sit here right now, I
9 recall that Mr. Iacovacci had called me --
10 employees at Brevet, whether or not he said
11 he had -- he had retired or was retiring, I
12 am not certain as to, um, the timing of
13 those -- those conversations.

14 But my recollection is that
15 there was -- that April 1, 2016 date is a
16 date that I recall being a date that --
17 that we had to address employees'
18 questions, as to the status of
19 Mr. Iacovacci.

20 Q. What employee questions did you
21 need to address, with respect to the April
22 1, 2016 status of Mr. Iacovacci?

23 A. As I sit here right now, my
24 recollection is that the status as to
25 whether or not he was retired, as of that

1 MARK CALLAHAN

2 date.

3 Q. Do you recall employees asking
4 you whether or not Mr. Iacovacci was
5 retired, as of that date?

6 A. As I sit here right now, I
7 don't recall employees asking me.

8 My recollection is with respect
9 to employees asking, I believe, it was our
10 COO at the time.

11 Q. And who was that?

12 A. As I sit here right now, I
13 believe it was Jennifer Fleischner at that
14 time.

15 Q. And what did Mrs. -- Ms.
16 Fleischner tell the people who asked her
17 that question?

18 A. As I sit here right now, I
19 don't know what Ms. Fleischner told
20 employees.

21 Q. How do you know that employees
22 were talking to Ms. Fleischner about it?

23 A. As I sit here right now, my
24 recollection is that Ms. Fleischner
25 informed us -- informed myself and Mr.

1 MARK CALLAHAN

2 Monticciolo of these discussions.

3 Q. What did you say to Ms.
4 Fleischner about the discussions?

5 A. As I sit here right now, I
6 don't -- I don't recall the specifics of
7 exactly what she was told, besides the fact
8 that he is still an employee, as she knew,
9 as she oversaw compensation, you know,
10 salary.

11 Q. So, you recall telling Ms.
12 Fleischner, very clearly, that
13 Mr. Iacovacci was not retired, as of April
14 1, 2016?

15 A. As I sit here right now, my
16 recollection is that there was a
17 conversation with Mr. Fleischner.

18 What the specifics, or whether
19 it was a specific statement that that --
20 that he was not retired, as of April 1,
21 2016, or whether it was a conversation
22 about the process is ongoing, with respect
23 to a separation agreement, I don't recall
24 the specifics.

25 Q. I didn't follow your testimony,

1 MARK CALLAHAN

2 with respect to what you communicated to
3 Ms. Fleischner.

4 Did you communicate to Ms.
5 Fleischner that Mr. Iacovacci was not
6 retiring?

7 A. As I sit here right now, my
8 recollection is that it was communicated to
9 Ms. Fleischner that there was an ongoing
10 process of negotiating the separation
11 agreement.

12 Q. When you say "negotiating a
13 separation agreement," do you mean to say
14 that it was communicated to Ms. Fleischner
15 that Mr. Iacovacci was not retiring from
16 Brevet?

17 A. As I sit here right now, my
18 recollection is that the conversation was
19 about a separation agreement, not a
20 conversation about retiring.

21 Q. Okay. Who keeps the org -- the
22 organization charts, at Brevet?

23 A. As I sit here right now, a -- a
24 -- a -- I am not sure who keeps them.

25 Q. You have no idea?

1 MARK CALLAHAN

2 (Witness reviews document.)

3 A. As I sit here right now, I
4 don't have a definitive view as to who
5 keeps them.

6 Q. Okay. Was Mr. Iacovacci
7 removed from the org charts, in 2016?

8 A. As I sit here right now, I
9 don't -- I don't know when and/or if
10 Mr. Iacovacci was or wasn't removed from an
11 org chart.

12 Q. Well, what would you expect,
13 based on your recollection of the events?

14 MR. SOLOMON: I object to the
15 question.

16 A. As I sit here right now, I
17 don't know what my expectation was at that
18 point in time.

19 Q. Why is that?

20 Why wouldn't you expect for him
21 to not be touched on the organizational
22 charts, if your position is that he didn't
23 leave Brevet until October?

24 A. As I sit here right now --

25 Q. Yes.

1 MARK CALLAHAN

2 As you sit here right now, why
3 don't you have --

4 A. I don't have --

5 THE WITNESS: I -- I am
6 answering the question.

7 A. As I sit here right now, my
8 recollection, back to that time period,
9 something that we discussed earlier, I
10 wasn't interfacing with investors. I
11 didn't have a need for work charts, with
12 respect to -- of -- of Brevet, with respect
13 to dealing with our credit counterparties
14 or -- or transactions, our borrowers.

15 Q. Who did do that interfacing?

16 A. This timeframe? As I sit here
17 right now, I believe that was -- I think --
18 I believe Brian Lippy headed up that group.

19 Q. Okay. Did Mr. Monticciolo
20 interface with investors?

21 (Witness reviews document.)

22 A. As I sit here right now, there
23 were many people that interfaced with
24 investors, if investors had certain
25 questions.

1 MARK CALLAHAN

2 So, Mr. Monticciolo could have
3 interfaced with investors, as well as
4 others.

5 Q. But you weren't aware of those
6 people. You did not interface with
7 investors; is that right?

8 A. As -- as I've said before, my
9 recollection, at this point in time, is
10 that my -- the majority of my time was not
11 spent doing that.

12 However, if investors had a
13 specific need, I would -- I would meet with
14 them, to discuss whatever that specific
15 need was.

16 But that was quite infrequent.

17 Q. Do you think it's important for
18 a regulated entity, like Brevet, to keep
19 accurate organizational charts, Mr.
20 Callahan?

21 A. I -- as I sit here right now, I
22 believe that it's important for a regulated
23 institution, like Brevet, to -- to ensure
24 that it -- that it provides the information
25 that is as accurate and -- as possible,

1 MARK CALLAHAN

2 when dealing with the regulators. Sure.

3 Q. With the benefit of that
4 clarification, can I ask again: Wouldn't
5 your expectation be that Mr. Iacovacci
6 would appear on Brevet's organizational
7 charts all the way through October of 2016?

8 A. As I sit here right now, I
9 don't have an expectation as to what I
10 would have thought back then and I would
11 imagine that -- that, um, the team would
12 have consulted with counsel, as to how to
13 best deal with whether or not -- and -- how
14 Mr. Iacovacci should or shouldn't be
15 included.

16 Q. Why would counsel need to be
17 involved?

18 Do you think that counsel needs
19 to be involved, in order for the Brevet
20 executives to understand that they need to
21 report accurately on their organizational
22 charts the various positions that people
23 hold?

24 A. In terms of the question as to
25 why would counsel need to be involved? I --

1 MARK CALLAHAN

2 as I sit here right now, I would think that
3 counsel would need to be involved because
4 you wouldn't want to have a -- a situation
5 of a bait and switch, where an investor,
6 who was looking to come in and was provided
7 information in, let's say, in October of
8 2016 and that it was, you know, came in,
9 call it, November of 2016 and it -- it
10 would appear like a misrepresentation.

11 That is why, you know, we are
12 always looking at what is in the best
13 interest of our investors. And, to me,
14 that would be a logical conversation to --
15 to have, with counsel.

16 Q. Take a look at Exhibit 2,
17 please.

18 (Witness complies.)

19 (Whereupon, a short recess was
20 taken.)

21 MR. SOLOMON: Exhibit 2 is on
22 the screen.

23 Q. Do you see this organizational
24 chart?

25 Do you recognize it, Mr.

1 MARK CALLAHAN

2 Callahan?

3 (Witness reviews document.)

4 A. Are you asking about all of
5 them or --

6 Q. I am just asking whether you
7 recognize the document.

8 Does this lag -- look like a
9 Brevet organizational chart?

10 (Witness reviews document.)

11 A. As I sit here right now, this
12 is -- this is a document that I feel like I
13 have seen in the past, yes.

14 Q. Can you scroll down to Page 2?

15 (Witness complies.)

16 Q. Take a look at [REDACTED]

[REDACTED] you will see that
18 yourself and Mr. Monticciolo are identified
19 as [REDACTED] [REDACTED]

20 Do you see that at the top?

21 (Witness reviews document.)

22 A. Um, yes. I see that.

23 Q. Is that accurate; the two of
24 you were [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] in 2016?

1 MARK CALLAHAN

2 (Witness reviews document.)

3 A. As I sit here right now I -- I
4 -- I don't recall, specifically. But it
5 very well could be the case.

6 Q. At any point in time, when you
7 were at Brevet, did the [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10 A. As I sit here right now, I

11 recall [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 Q. Okay. If you take a look at the
16 next line, or a set of lines down, you see,
17 on the left side of the page: [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED]

21 Do you see that?

22 (Witness reviews document.)

23 A. I see Paul Iacovacci's name.

24 Q. And he is identified as a
25 Member of the Investment Team, on the

1 MARK CALLAHAN

2 sourcing side.

3 Is that an accurate depiction
4 of Mr. Iacovacci's position, as of March
5 1st of 2016?

6 (Witness reviews document.)

7 A. As I sit here right now,
8 looking at this on the date of March 1st,
9 he is still an employee of Brevet and that
10 was his function.

11 So, I would say yes, that, to
12 me, that looks to be accurate.

13 Q. Okay. So, when do you think
14 that slide should have changed, to reflect
15 the deletion of Mr. Iacovacci from this
16 portion of the Brevet organizational chart?

17 (Witness reviews document.)

18 A. Well, a couple of things. So,
19 one is: I don't know what this org chart
20 is. It looks to me -- this is not a
21 document that I believe would ever be
22 produced to anybody outside of Brevet.

23 It looks to me, to be a, sort
24 of, the -- the -- a sandbox, the work area,
25 of -- of a Brevet employee. That it would

1 MARK CALLAHAN

2 use to then likely copy and paste them into
3 an actual investor presentation or
4 something else.

5 Q. Can you tell me what, about the
6 document that we are looking at, leads you
7 to believe that? What markings or whatever
8 else you're looking at that suggests that
9 this is part of the sandbox of an
10 individual employee of Brevet?

11 (Witness reviews document.)

12 A. Having -- you know, as -- as I
13 sit here looking at this, right now, it's
14 -- the -- there are four -- what -- what
15 you're referring to as "org charts;" right?

16 But there's no -- they don't
17 make any sense, four pages in a row, like
18 this.

19 These would be something that
20 would be used individually, in response to,
21 I would imagine, investor questions. This
22 is not something -- this -- this -- these
23 four pages?

24 I would -- I would highly doubt
25 whether or not this was ever used with

1 MARK CALLAHAN

2 anybody.

3 Q. Because the pages are together
4 and you view them as addressing separate
5 types of inquiries?

6 (Witness reviews document.)

7 A. This would be -- because they
8 are together. Because there are no
9 explanations. Because there's a level of
10 detail that isn't, typically, provided.

11 Q. Okay.

12 A. You know, and because it's not
13 in a presentation that -- that is listed
14 out, like it's not a formal presentation,
15 like we would typically have; with a cover
16 page, with disclaimers on it, which is why
17 it is, my view, it would be highly unlikely
18 that this went out.

19 Q. Regardless of whether this went
20 out or not, given that this would form the
21 basis for responses to investment
22 inquiries, you would agree with me that
23 it's important that this remain accurate;
24 correct?

25 (Witness reviews document.)

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 believe it's important to make sure that
4 information that goes to investors remains
5 accurate.

6 This document is not part of
7 something that went to investors. That it,
8 theoretically, wouldn't have gone through a
9 compliance process and the compliance
10 process would -- would do what we talked
11 about earlier: Determine whether or not
12 somebody in the situation, like
13 Mr. Iacovacci, should or shouldn't be in,
14 so as not to mislead investors.

15 Q. Well, you would agree that
16 regardless of whether this actual document
17 was sent outside of Brevet, its goal is to
18 inform people who are responding to
19 investor inquiries about the status of
20 various things and the organizational
21 structure of Brevet; correct?

22 A. No.

23 Q. You were -- you were
24 circulating draft -- drafts of these
25 organizational charts, that were

1 MARK CALLAHAN

2 inaccurate, and that wouldn't concern you
3 because it wasn't going straight to
4 investors, Mr. Callahan?

5 (Witness reviews document.)

6 A. As I sit here right now, you're
7 -- I am not sure exactly what you're asking
8 but I wouldn't view this as being -- you
9 know, this is not something that -- drafts?
10 You're talking about drafts, internally,
11 that -- that a -- that there is an
12 employee, of Brevet, who is working on
13 this?

14 Q. That is not my question.

15 My question is: Would you be
16 concerned, as the President of Brevet,
17 would you be concerned that inaccurate,
18 erroneous organizational charts were being
19 circulated within Brevet?

20 A. As I sit here right now, I
21 would be concerned if inaccurate work
22 charts made it through a compliance process
23 and were circulated outside of Brevet.

24 Q. I would --

25 A. I would expect -- I would

1 MARK CALLAHAN

2 expect that that the compliance process is
3 a process that is there for a reason and
4 the compliance process is meant to fix
5 mistakes and there are mistakes that get
6 fixed in our compliance process.

7 Q. What is the compliance process
8 that was used, to correct mistakes, on
9 organizational charts, such as this?

10 A. As I sit here right now, I
11 don't believe there was a compliance
12 process on the charts I am looking at.

13 Q. My question to you, Mr.
14 Callahan, is: When do you think this page
15 of the organizational chart should have
16 changed, to reflect the deletion of Mr.
17 Iacovacci's presence, on the sourcing side
18 of the Investment Team, and similarly, on
19 the next page, under the managing director
20 list, under "source," you will see Mr.
21 Iacovacci's name, as well.

22 When, according to you, should
23 that have changed?

24 A. As I sit here right now, I
25 believe I have already answered that. My --

1 MARK CALLAHAN

2 my view would be that I would have had a
3 conversation with counsel, as to whether,
4 you know, what is the best way to
5 communicate this, given the circumstances
6 as to what is going on, so as to not
7 mislead investors.

8 Q. I guess I -- I am -- I am
9 struggling to understand why counsel gets
10 involved here.

11 When somebody leaves Brevet, do
12 you need to have counsel involved, in order
13 to approve the deletion of that individual
14 from the organizational chart?

15 MR. SOLOMON: I object to the
16 hypothetical.

17 There's no foundation.

18 A. As I sit here right now, the --
19 the -- the difference between what you just
20 talked about is when somebody leaves Brevet
21 whether or not they get removed, if they
22 are -- if they have left Brevet, I would
23 imagine they would be removed from the org
24 chart prior to it being utilized in any
25 external correspondence.

1 MARK CALLAHAN

2 To the extent that there is
3 knowledge of somebody, potentially,
4 leaving, that is where I think it would be
5 better practice to consult with a
6 securities' lawyer, to get advice, as to
7 what one would typically do, what it would
8 be expected of, in an RIA, in such a
9 situation.

10 Q. Are you referring to consulting
11 counsel to resolve an ambiguity, with
12 respect to whether somebody was, or was
13 not, a Brevet employee at any particular
14 point in time?

15 A. No.

16 Q. Then you are going to have to
17 help me understand what you're saying.

18 Why is counsel getting involved
19 in the organizational chart process, based
20 on what you're testifying?

21 A. I am not -- I am not saying,
22 you're asking me what -- you know, what do
23 I think?

24 I am not certain what happened
25 because I wasn't involved in this -- in

1 MARK CALLAHAN

2 this work chart.

3 Q. Yeah, I didn't ask --

4 MR. CYRULNIK: I'm sorry.

5 A. I am just saying that with
6 respect to whether or not, or when, to
7 remove Paul, because you asked for my view
8 as to when Paul should have been be
9 removed?

10 Q. Yes.

11 A. My view is: I don't have a
12 view.

13 And given the facts and
14 circumstances, I think it would make sense
15 to have gone to counsel, and given those
16 facts and circumstances, and ask for
17 advice.

18 Q. Well, my question is: Why
19 don't you have a view, Mr. Callahan?

20 If your view is that
21 Mr. Iacovacci remained with Brevet up until
22 October of 2016, why don't you have a view
23 as to whether or not Mr. Iacovacci should
24 have been removed from the organizational
25 chart in, say, May?

1 MARK CALLAHAN

2 MR. SOLOMON: I object to the
3 question.

4 A. As I sit here right now, you
5 know, my question -- my answer doesn't
6 change.

7 It's -- it's -- I don't have a
8 view because of the facts and circumstances
9 related to what was going on and we would
10 always look to not mislead investors.

11 So, in the -- in the interest
12 of not misleading investors, one would
13 think that the -- there should be
14 consideration, as to what should happen.

15 Q. "Not mislead investors," as in,
16 for example, sending them an e-mail saying
17 that Mr. Iacovacci is retired, as of April
18 of 2016?

19 MR. SOLOMON: I object to the
20 question.

21 A. As -- as I sit here right now,
22 that e-mail, it's disappointing that that
23 e-mail went out.

24 Unfortunate that, potentially,
25 Mr. Iacovacci used his influence to -- to

1 MARK CALLAHAN

2 provide that back-hand information.

3 Q. Mr. Callahan, you have no
4 basis, whatsoever, to accuse Mr. Iacovacci
5 of orchestrating Mr. Mahr's -- Mahar's
6 e-mail; correct?

7 A. As I sit here right now, based
8 on conversations with Ms. Fleischner, I
9 believe that to be the case.

10 Q. You believe what to be the
11 case? That Mr. Iacovacci orchestrated Mr.
12 Mahar's e-mail?

13 A. As I sit here right now, based
14 on conversations with Ms. Fleischner, I
15 believe that the information about a April
16 1, 2016 retirement date came from
17 Mr. Iacovacci.

18 Q. You're not accusing
19 Mr. Iacovacci of telling Mr. Mahar to send
20 an e-mail that indicated that he had
21 retired, as of April, 2016, are you?

22 A. As I sit here right now, that
23 is not at all what I am saying.

24 Q. Okay. That is just what I
25 wanted to clarify.

1 MARK CALLAHAN

2 You talked about being
3 disappointed in the distribution of that
4 e-mail.

5 Mr. Callahan, would you be
6 disappointed if the Brevet organizational
7 chart was reflect -- was updated prior to
8 October of 2016, to include the deletion,
9 of Mr. Iacovacci, from the Investment Team?

10 A. As I sit here right now, based
11 on everything that we just discussed, I --
12 I would not be disappointed.

13 I would -- I would of expected
14 there to be a process, to go through and
15 determine -- and to remove him and -- and
16 it looks like that was done.

17 Q. So, you believe it is
18 consistent, with your view, of what
19 happened here for Mr. Iacovacci to be
20 removed from the Brevet organizational
21 chart in, say, May of 2016; is that fair?

22 MR. SOLOMON: I object to the
23 question.

24 A. As I sit here right now, I'm --
25 I'm not providing an opinion as to

1 MARK CALLAHAN

2 consistency.

3 I'm -- I simply am -- stated
4 that I would have expected, that given the
5 facts and circumstances, it -- it would
6 have been useful to get advice of counsel,
7 to determine what to do in that
8 circumstance.

9 Q. In what circumstance?

10 A. So as to not to misrepresent
11 anything to investors.

12 Q. Why would you be
13 misrepresenting something to investors, in
14 May of 2016, by reporting Mr. Iacovacci, as
15 a Member of the Investment Team?

16 A. Which org chart are you looking
17 at?

18 Q. I am not looking at an org
19 chart.

20 I mean you are looking at the
21 May -- let's start with the March one.

22 In March of 2016; right? March
23 1, 2016, org chart, you see "Mr. Iacovacci"
24 listed there.

25 Am I understanding you

1 MARK CALLAHAN

2 correctly to be testifying that you think
3 that that might be misleading to investors
4 because Mr. Iacovacci had announced a
5 potential intention to retire from the
6 company.

7 Is that a --

8 MR. SOLOMON: Objection.

9 A. I don't know what org chart I
10 am looking at.

11 MR. SOLOMON: I object to the
12 question.

13 It misstates his testimony
14 about this very document.

15 Do you want him to look at
16 Exhibit 2?

17 MR. CYRULNIK: Yeah. One
18 second.

19 Q. We are looking at Exhibit 2 and
20 once again, I am not -- I can't be
21 misstating your testimony because I am not
22 stating your testimony, I am asking you a
23 question.

24 My question is: Do you believe
25 that it could be potentially misleading for

1 MARK CALLAHAN

2 the March 1, 2016 organizational chart to
3 list "Paul Iacovacci," under "sourcing" and
4 the "investment committee," given whatever
5 conversations he had with you about a
6 prospective departure from Brevet; "yes" or
7 "no"?

8 A. So, first of all, I don't know
9 what -- am I looking at the March org
10 chart?

11 Q. I can represent to you that
12 you're looking at an organizational chart
13 that was produced by Brevet, with metadata
14 that is labelled "2016" -- "March 1, 2016."
15 Yes.

16 (Witness reviews document.)

17 A. And sorry, so, now that I am
18 looking at the right document, I am looking
19 at Page 2 of that pdf?

20 Q. We looked at Pages 2 and pages
21 -- and Page 3, both of which list that
22 Mr. Iacovacci on the left side.

23 A. And -- and I believe you made
24 it reference in that question, to him being
25 part of the Investment Team and on the

1 MARK CALLAHAN

2 investment committee.

3 Q. No.

4 I listed -- I made reference to
5 him being listed under the sourcing side of
6 the Investment Team, on Page 2, and under
7 the sourcing side, listed as a "managing
8 director," on Page 3.

9 A. Okay.

10 Q. My question is: Do you believe
11 that it is, potentially, misleading to list
12 Mr. Iacovacci, in this March 1st
13 organizational chart, given his stated
14 intention to potentially separate from
15 Brevet?

16 MR. SOLOMON: And I object to
17 the question.

18 A. Yeah. As I sit here right now,
19 I don't see how this document can be
20 misleading to anybody because it's not
21 going to anybody.

22 Q. Oh. How do you know that?

23 A. As I sit here right now, I look
24 at this and there are no disclaimers,
25 there's no title page, there's no who it's

1 MARK CALLAHAN

2 going to.

3 It's not a standard-form
4 presentation.

5 Q. Well, that, I understand.

6 But it doesn't need to be
7 disseminated outside of Brevet, in order to
8 be misleading; right?

9 A. As I sit here right now, I --
10 I, you know, I don't know -- I am not sure.
11 I am not a lawyer.

12 But, to me, in order to be
13 misleading, you have to mislead somebody.

14 Q. Well, is it your testimony that
15 this document existed on some system but
16 was not viewed by anybody?

17 (Witness reviews document.)

18 A. As I sit here right now, I -- I
19 would imagine that this was on our network.

20 Q. Okay.

21 A. And -- and -- and our network
22 isn't open to outsiders.

23 Q. Okay. But it is open to Brevet
24 people?

25 (Witness reviews document.)

1 MARK CALLAHAN

2 A. There are -- as I sit here
3 right now, my recollection is at that point
4 in time, there were various approvals for
5 various drives, depending on what drive and
6 what your employee, um, group that you were
7 in, your employee status, you would, or
8 wouldn't, have access to certain drives.

9 Q. Mr. Callahan, you would agree
10 with me that this organizational chart,
11 whether or not it was disseminated outside
12 of Brevet, whether it was stored on the
13 Brevet drive, whether ten people had access
14 to it or whether 50 people had access to
15 it, that it was proper practice, for
16 Brevet's executives, to ensure that its
17 organizational charts contain accurate
18 information about the various employees
19 that are working on its Investment Team.

20 Is that fair?

21 MR. SOLOMON: I object to the
22 question.

23 And asked and answered several
24 times.

25 A. As I sit here right now, I --

1 MARK CALLAHAN

2 you know, no -- nothing -- nothing changes.

3 Q. Is the answer to my question
4 "yes" or "no;" is that accurate or not?

5 MR. SOLOMON: Objection.

6 A. Your -- I don't agree with the
7 way that you characterize the question.

8 Q. I don't know what you mean by
9 that.

10 I am asking you whether or not
11 you agree that this needs to be accurate?

12 A. I don't believe that this needs
13 to be accurate.

14 As I sit here right now,
15 looking at a draft document, draft
16 documents are, by their nature, normally
17 not accurate.

18 So, if you say that every draft
19 of every document on every folder on every
20 Brevet server has to be accurate is,
21 frankly, absurd.

22 Q. Mr. Callahan, what is the basis
23 for your testimony that this is a draft
24 document?

25 (Witness reviews document.)

1 MARK CALLAHAN

2 A. As I sit here right now,
3 looking at this document, it is not in the
4 form of a final document, to go out to
5 anybody.

6 Q. What is it missing? A stamp
7 that says: Do not rely on this? Or what
8 -- what -- what -- what exactly, are you
9 claiming is missing from this document?

10 MR. SOLOMON: Asked and
11 answered.

12 And therefore, I object.

13 A. Yeah, as I sit here right now,
14 among other things, it's -- it's missing
15 disclaimers. It's missing a title page.
16 It's missing context, as to what is on each
17 of the -- what is on each of the slides and
18 there could be other things that its
19 missing, as well.

20 Q. And so, if it's missing those
21 things, is it your testimony that it need
22 not be accurate -- it's not important for
23 Brevet to be keeping accurate lists of its
24 Investment Team Members, for example?

25 A. As I sit here right now, that

1 MARK CALLAHAN

2 is not my testimony.

3 My testimony is that this is a
4 draft document and that not all draft
5 documents are, by their nature, a hundred
6 percent quote/unquote accurate.

7 Q. Do you have any idea why the
8 people listed over here, under "sourcing,"
9 in this functional organizational chart,
10 would change between March and May of 2016;
11 "yes" or "no"?

12 (Witness reviews document.)

13 A. As I sit here right now, as I
14 wasn't involved in these charts, no.

15 Q. And, specifically, with respect
16 to Mr. Iacovacci, any idea why
17 Mr. Iacovacci would appear on this chart,
18 in March of 2016, but disappear from this
19 chart in May of 2016; "yes" or "no"?

20 A. As I sit here right now, as I
21 wasn't involved with these charts, I don't
22 know.

23 Q. Any chance that Mr. Mahar
24 consulted this chart, in providing the
25 information, the false information,

1 MARK CALLAHAN

2 according to you, that he provided the
3 investor, in the exhibit that we looked at
4 previously?

5 MR. SOLOMON: I object to the
6 question.

7 A. As I sit here right now, I
8 don't know whether or not Mr. Mahar had
9 access this chart or whether or not he
10 consulted this chart.

11 Q. Fair to say that if you had
12 received a copy of a chart that removed
13 Mr. Iacovacci, prior to October of 2016,
14 you would have taken issue with that and
15 sought to correct that error?

16 A. As I sit here right now, I
17 don't know what I would have, or wouldn't
18 have, done, if I would have seen a chart
19 with, or without, Mr. Iacovacci in that
20 time period.

21 And as -- as I have talked to
22 you about previously, I wasn't involved
23 with putting out these charts anyway.

24 Q. Well, if you saw documentation
25 that was identifying Mr. Iacovacci, as

1 MARK CALLAHAN

2 "retired," prior to October of 2016, would
3 you have sought to correct information --
4 that misinformation?

5 A. As I sit here right now, in
6 this -- in this exhibit that you are
7 showing, I don't see any reference to
8 Mr. Iacovacci being "retired."

9 Q. I am not asking you about an
10 exhibit, I am asking you, generally,
11 because I think you said you weren't
12 involved in the creation of this exhibit.

13 If you saw information that
14 indicated Mr. Iacovacci retiring, prior to
15 October of 2016, would you have sought to
16 correct that?

17 A. As I sit here right now, and,
18 you know, speculating as to whether or not
19 I would have done anything, if I saw a
20 document that said definitively that
21 Mr. Iacovacci was retired, I would -- I
22 would -- I would question that document.

23 Knowing that that had-- that,
24 in fact, wasn't the case at that point in
25 time doesn't mean that the document had to

1 MARK CALLAHAN

2 be changed, it just means a question as to
3 why it was -- why it was communicated in
4 the way it was.

5 And again, what we are looking
6 at now, are draft documents.

7 Q. Let's take a look at the next
8 document, please.

9 (Witness complies.)

10 MR. SOLOMON: What does that
11 mean?

12 MR. CYRULNIK: What are you
13 asking?

14 MR. SOLOMON: What does that
15 mean?

16 We were just on 2. Should we
17 go to 3?

18 MR. CYRULNIK: No.

19 It doesn't mean go to 3. It
20 means look at the next exhibit that
21 was added at the bottom of the list,
22 which is Exhibit 11.

23 Q. Tell me when you have that
24 pulled up.

25 (Witness complies.)

1 MARK CALLAHAN

2 MR. SOLOMON: Exhibit 11?

3 MR. CYRULNIK: That is right.

4 (Whereupon, a short recess was
5 taken.)

6 MR. SOLOMON: It's on the
7 screen.

8 Q. Who is Sherree Harris?

9 (Witness reviews document.)

10 A. As I sit here right now, I
11 believe that point in time, Sherree Harris
12 was a -- was an employee, at Brevet
13 Holdings.

14 Q. Do you know what her position
15 was?

16 A. As I sit here right now, I
17 don't recall what her position was.

18 Q. And do you see that she is
19 sending you an e-mail here: "Mark, as
20 requested, please find a list of current
21 employees, along with their titles."

22 (Witness reviews document.)

23 A. I see that statement.

24 Q. Do you recall requesting a list
25 of current employees, along with their

1 MARK CALLAHAN

2 titles?

3 A. As I sit here right now, I
4 don't recall requesting that.

5 Q. Any reason to doubt that you
6 did?

7 A. As I sit here right now, I
8 don't have any reason to doubt that I
9 requested it.

10 Q. Would it surprise you that the
11 list attached to this e-mail indicated that
12 Paul Iacovacci had been retired?

13 A. As I sit here right now, I -- I
14 guess I would be disappointed that
15 something that Sherree sent was wrong. But
16 I don't know that I would be surprised.

17 Q. Did Sherree make many mistakes?

18 A. I didn't say that.

19 Q. Please look at Exhibit 12?

20 (Witness complies.)

21 Q. That is going to be an Excel
22 spreadsheet and this is the attachment to
23 that e-mail that we just looked at.

24 It will pull up a little
25 differently, in all likelihood, in your

1 MARK CALLAHAN

2 Exhibit Share, because it is going to pull
3 up, in data form.

4 So, let me know when you have
5 it up on the screen.

6 (Witness complies.)

7 (Whereupon, a short recess was
8 taken.)

9 MR. CYRULNIK: Do you have that
10 up?

11 MR. SOLOMON: Exhibit 12 is
12 open.

13 (Witness reviews document.)

14 Q. Well, I am sure you can
15 anticipate my next question because towards
16 the bottom of the page, but Mr. Callahan,
17 do you see that the document that was sent
18 to you, with a list of 34 employees with
19 their titles lists "Paul Iacovacci," as
20 "retired"?

21 (Witness reviews document.)

22 A. Looking at this spreadsheet,
23 there's a column that lists "Mr. Iacovacci"
24 as -- as "retired," despite him continuing.

25 But it also says that his

1 MARK CALLAHAN

2 current status is "employee."

3 Q. And what does that mean to you?
4 How can you be "retired" and
5 "employee" at the same time?

6 A. That is a great question.
7 But the employee, clearly,
8 demonstrates that he is still an employee
9 and still getting paid.

10 Q. So, employee -- "current
11 status" refers to whether he is still
12 getting paid or not; right?

13 A. As I sit here right now, I
14 don't know what -- what the rational or
15 what the current status was used for --

16 Q. Mr. --

17 A. -- based on looking at this, it
18 -- it appears that -- just scrolling down,
19 to see if there is anything other -- any
20 other, um, items in that column, it looks
21 like all of those columns are -- are listed
22 as "employees."

23 And I believe, from the prior
24 exhibit you showed, this was a request for
25 current employees.

1 MARK CALLAHAN

2 So, that would be consistent
3 that this list would just contain current
4 employees and it would also include
5 Mr. Iacovacci.

6 Q. Does the designation
7 Mr. Iacovacci, as "retired," does that
8 strike you as an accurate designation?

9 (Witness reviews document.)

10 A. The, um -- as this -- as I sit
11 here right now, I don't believe that is an
12 accurate designation.

13 Q. Did you tell Ms. --

14 A. It also -- it also lists him as
15 being "retired," with respect to his I9
16 documentation.

17 I don't understand that.

18 MR. SOLOMON: Is that it. They
19 will go back over that.

20 Is that John Tripp?

21 THE WITNESS: Oh, that is John
22 Tripp.

23 Never mind.

24 A. It's hard to follow this --
25 right to left, of this document.

1 MARK CALLAHAN

2 Q. Why is that?

3 A. Because it doesn't fit on the
4 screen.

5 Q. Oh, okay.

6 Well, you can -- you can
7 probably demagnify it. That is fine, for
8 the purposes of my question.

9 Did you tell Ms. Harris, when
10 you received this chart from her, that it
11 needed to be updated, that it was
12 inaccurate, because some of the information
13 reflected therein was misleading?

14 A. As I sit here right now, I
15 don't know whether or not I opened this
16 file and reviewed this file, had a
17 conversation with -- with Ms. Harris or
18 this file went to someone else because it
19 was from somebody else's request.

20 I -- I don't have a rec -- a
21 recollection as to what would have happened
22 with this document.

23 Q. Any recollection of telling Ms.
24 Harris that she had it all wrong,
25 Mr. Iacovacci had not, in fact, retired,

1 MARK CALLAHAN

2 prior to June of 2016?

3 (Witness reviews document.)

4 A. As I sit here right now, I
5 don't recall that I had any conversations
6 because I don't recall if I even reviewed
7 this document that -- that Ms. Harris sent
8 and I guess I would refer you back, too, to
9 fact that I believe one of the people that
10 Ms. Fleischner had indicated had asked
11 about the -- Paul retiring because she
12 heard it from Paul was Ms. Harris.

13 Q. And Ms. Fleischner heard it
14 from Paul, you said?

15 Did she hear it from anybody
16 else that Paul had retired?

17 A. I mis --

18 THE WITNESS: Sorry. I
19 misstated that.

20 A. I believe that it was -- my
21 understanding is that Ms. Fleischner heard
22 it from a number of people, including Ms.
23 Harris.

24 Q. Who else?

25 A. And that Ms. Harris had heard

1 MARK CALLAHAN

2 it from Mr. Iacovacci.

3 Q. Apart from Ms. Harris, who else
4 did Ms. Fleischner hear that Mr. Iacovacci
5 had retired from?

6 MR. SOLOMON: I object to the
7 question.

8 Q. To your knowledge.

9 A. As I sit here right now, I
10 believe it was Ms. Harris. I believe it was
11 Mr. Mahir.

12 I don't -- I don't recall who
13 else.

14 Q. Okay. Thanks.

15 MR. CYRULNIK: Let's go off the
16 record

17 THE VIDEOGRAPHER: Off the
18 record at 4:16.

19 This marks the end of Media
20 Unit Number 5.

21 Thank you.

22 (Whereupon, an off-the-record
23 discussion was held.)

24 THE VIDEOGRAPHER: We are on
25 the record at 4:25.

1 MARK CALLAHAN

2 This marks the beginning of
3 Media Unit Number 6.

4 Thank you.

5 Q. Mr. Callahan, do you have a
6 computer that you have in your Brevet
7 office?

8 A. There is a Brevet work computer
9 in -- in Brevet's office that I utilize.

10 Q. Is that your work computer?
11 Is that -- is that -- are you
12 the only Brevet employee who uses that work
13 computer?

14 MR. SOLOMON: I object to the
15 form.

16 A. It is -- it is not -- it is not
17 my computer, it's Brevet computer.

18 And -- and, um, there are
19 others that can utilize that computer.

20 Q. So, does Brevet have these
21 shared computers, as opposed to dedicated
22 computers, for individual employees, or
23 executives, in the work -- in the
24 workplace?

25 A. It's my understanding that

1 MARK CALLAHAN

2 computers are all hooked up to a network
3 and -- and a username and -- and password
4 can be utilized to -- to log into that
5 network from -- from a computer that may
6 not be at your desk or in your office.

7 Q. So, if another Brevet employee
8 wanted to use the pinnacle machine that you
9 had used yesterday, they can go into your
10 -- into -- into that machine, type in their
11 username and password and use it the same
12 way that you did the day before?

13 A. As I sit here right now, I -- I
14 am not a tech guy, I don't -- I don't know
15 if that is the case. I -- I believe that
16 it's the case, where you can log into other
17 computers and whether or not they can use
18 it the same way I used it? I don't know if
19 they used it the same way because they --
20 they can't access my files because it's --
21 they are logging in to their specific
22 login, would be my understanding.

23 But, again, I am not a tech
24 guy.

25 Q. When you use a computer in the

1 MARK CALLAHAN

2 office, are you using the same machine each
3 time or are you just choosing whatever
4 machine that your eyes happen to spot and
5 logging in with your credentials?

6 A. The -- I haven't been to the
7 office in a long time. When I -- when I go
8 to the office, I have utilized computers --
9 I have a computer in my office and I have
10 utilized computers in conference rooms and
11 logged into them, in both places.

12 Q. Do you know whether anyone else
13 used a computer that was in your office,
14 apart from you?

15 A. As I sit here right now, I
16 don't know whether or not somebody has been
17 -- has utilized my computer.

18 But having not been to the
19 office in, probably, five months and -- and
20 I know that I have offered other people to
21 use my office, in my absence, so, I don't
22 know whether or not they have or they
23 haven't.

24 But it's certainly possible
25 that they have.

1 MARK CALLAHAN

2 Q. Is that a desk-top machine or a
3 -- or a laptop computer, that you are
4 referring to?

5 A. I believe that it's a desk top.
6 A Brevet desk-top computer that is sitting
7 in my office.

8 Q. Okay. What about working from
9 home? I know we were talking back in the
10 2016 time period. I don't know if anything
11 has changed, since COVID.

12 But: Back in 2016, did you
13 also have a computer that you used at home?

14 A. It is my recollection that I
15 have had a -- a Brevet computer that I have
16 utilized for -- for work, when I had been
17 at home for quite some time.

18 Q. You said "Brevet computer."

19 Do you mean that that computer
20 is dedicated to Brevet and only Brevet
21 work?

22 A. When I say "Brevet computer," I
23 -- I -- my intention is to clarify that it
24 is -- is a computer that was purchased by,
25 maintained, owned, all of the software on

1 MARK CALLAHAN

2 it is -- is, um, is, as well, purchased by
3 and owned by, um, by Brevet.

4 Q. Okay. Thanks for the
5 clarification.

6 Do you use that computer for
7 non-Brevet purposes?

8 MR. CYRULNIK: Let me
9 re-phrase.

10 Q. Have you used that computer for
11 non-Brevet-work purposes?

12 A. Are you talking about a 2016
13 computer?

14 Q. Well, thanks for -- for
15 clarifying that. I didn't get really into
16 the details.

17 Have you had more than one
18 computer at your house that was purchased
19 by Brevet?

20 A. Yes.

21 Q. How many have you had over the
22 years?

23 A. As I sit here right now, I
24 don't know how many that I have had.

25 Q. More or less than five?

1 MARK CALLAHAN

2 A. As I sit here right now, I
3 would say that it would probably be five or
4 more.

5 Q. Do you think it's more than
6 ten?

7 A. As I sit here right now, I
8 don't believe it's more than ten.

9 Q. Have you ever had more than one
10 such computer in your house at one time?

11 A. Yes.

12 During COVID, I -- I -- I have
13 a desk top, which does not have video
14 functionality. So, I also have a laptop,
15 which allows me to do, um, video calls from
16 my home.

17 Q. So, the computers that you had
18 at your house that were purchased by
19 Brevet, prior to COVID, had been desk-top
20 computers?

21 A. As I sit here right now, that
22 is my recollection.

23 Q. And then, with the advent of
24 COVID --

25 A. Sorry. I -- I -- let me -- let

1 MARK CALLAHAN

2 me correct.

3 As I sit here right now, prior
4 to COVID, it was -- yes, it was a desk-top
5 computer.

6 I believe one of the computers
7 over the years, meaning, you know, fifteen,
8 for twenty years, I believe one of the
9 computers that I used at home was a laptop
10 some years ago.

11 Q. Okay. Who -- who selected the
12 -- the specs and the specifics of the
13 computer that Brevet purchased for your use
14 at home?

15 A. It's my understanding that --
16 that depending on the time period, it would
17 be Mr. Tripp or Mr. Lan.

18 Q. You didn't have any involvement
19 in identifying, say, the specs of a
20 computer that you were looking for or any
21 particular features that you wanted or they
22 would just send you a computer of their
23 choice; is that right?

24 A. Um, unfortunately, I am not
25 sophisticated enough to under -- to -- to

1 MARK CALLAHAN

2 know what features to request.

3 Q. All right. So, the answer, I
4 take it is no, you were not involved in the
5 selection at all?

6 A. I don't know who "we" is but I
7 -- I had not been involved in -- in
8 determining what features, what models,
9 what types, what setup of -- of computers.

10 Q. Okay. Did you ever use that --
11 well, so, when would you -- apart from the
12 COVID situation, you described, where you
13 had two at one time, is it the case that
14 you had one of these computers for a period
15 of time and, then, you would swap it out
16 for a new one?

17 A. It's my recollection that that
18 -- yes, when a new computer is provided,
19 the old computer is returned.

20 Q. And you would upgrade to a new
21 computer when -- was it a set interval or
22 was it based on, you know, the request that
23 you were feeling the computer was obsolete
24 or what was the criteria for getting a new
25 one?

1 MARK CALLAHAN

2 A. It's -- it's my recollection
3 that -- I -- I -- I -- that Mr. Tripp, or
4 Mr. Lan, would, um, inform me that it was
5 time for a new one and ask me to bring the
6 old one in and they would provide me with a
7 new one.

8 Q. Do you know what happened to
9 the old one, when you brought it in?

10 A. As I sit here right now, I
11 don't know what happened to the old
12 computers.

13 Q. Did you ever use these old
14 computers --

15 MR. CYRULNIK: Withdrawn.

16 Q. Did -- did all Brevet employees
17 get a similar setup, with a computer that
18 Brevet purchased, for the employee's home
19 use, prior to COVID?

20 A. As I sit here right now, I --
21 I, you know, I don't -- I don't know, prior
22 to COVID, whether all employees had a -- a,
23 um, a setup.

24 But I believe that, um, prior
25 to COVID, all employees had laptops and so,

1 MARK CALLAHAN

2 which allowed them to bring them home, if
3 they didn't have a -- a setup.

4 Q. Meaning as opposed to the desk
5 top, that you described, in your office,
6 other employees had laptops that, in
7 theory, could be used both, in the office
8 and at home?

9 A. That is -- that is my
10 recollection.

11 Q. Did anyone else have, um, um,
12 this setup, where you had two computers;
13 one at the office and one that they
14 purchased at home, separate from the one
15 that was being used in the office?

16 A. I believe that to be the case.

17 Q. Was that setup reserved for the
18 high -- high-level executives, at Brevet?

19 A. No. It was not.

20 Q. Approximately how many Brevet
21 employees, or executives, had, in addition
22 to a computer that was -- they used in the
23 office, had a computer that Brevet had
24 purchased for their use at home?

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 don't know that number.

3 Q. More or less than two or
4 greater than ten?

5 A. As -- as -- as I sit here right
6 now, I don't know.

7 However, ten seems like a low
8 number, given the time we are talking
9 about.

10 Q. You had that setup.

11 Did Mr. Monticciolo have that
12 setup, to your knowledge?

13 A. It is my understanding that
14 Mr. Monticello has a set up at home, as
15 well.

16 Q. How about Mr. Iacovacci?

17 Did he have a computer that was
18 purchased by Brevet for his use at home?

19 A. Yes.

20 Mr. Iacovacci had a computer,
21 purchased by Brevet, owned by Brevet, that
22 he utilized at home.

23 Q. How about Mr. Lan, did he?

24 A. I don't -- as I sit here right
25 now, I don't know whether or not Mr. Lan

1 MARK CALLAHAN

2 had a computer.

3 It was -- I would assume so but
4 I don't know.

5 Q. How about Mr. Tripp?

6 Do you know one way or the
7 other whether Mr. Tripp had the same setup?

8 A. As I sit here right now, I
9 would say the same for Mr. Tripp.

10 I -- I haven't been there, to
11 determine whether or not he has the same
12 setup.

13 Q. Apart from yourself, Mr.
14 Monticciolo and Mr. Iacovacci, is there
15 anyone else, as you are sitting here today,
16 that you are aware of, has a similar setup;
17 that had a computer that was purchased by
18 Brevet, for use at home, separate and apart
19 from the computer that the employee had at
20 the office?

21 A. What time period are you
22 talking about?

23 Q. I would say up until 2017.

24 A. Um, can I go back and look at
25 that exhibit, to see some of those employee

1 MARK CALLAHAN

2 names?

3 I just -- as I sit here right
4 now, I don't recall who the employees were,
5 at that time, regardless of whether or not,
6 you know, they had a computer.

7 Q. That is fair. I -- I want to
8 try to keep it efficient. So, it's fine.

9 It's fair to say sitting here
10 now the only way you could tell me, with
11 any level of certainty, that you know had a
12 similar setup, where yourself, Mr.
13 Monticciolo and Mr. Iacovacci, subject to
14 looking at any other org charts or lists of
15 people?

16 A. As I sit here right now, if I
17 were given a list of employees, I know,
18 certainly, there were a number of junior
19 people at the firm, who worked long hours,
20 who had setups at home which enabled them
21 to work those long hours.

22 I just don't know, sitting here
23 right now, which junior employees were
24 employed, in the 2017 and prior timeframe
25 that you're referring to.

1 MARK CALLAHAN

2 Q. Got it.

3 Okay. Let -- let's -- let's
4 talk about your use of the computer that --
5 that was purchased by Brevet for your use
6 at home.

7 Did you ever use that computer
8 for any purpose, other than Brevet-related
9 work?

10 A. As I sit here right now, I am
11 sure that I have done, um, you know,
12 personal work on that computer, as it, you
13 know, as I was working and simultaneously,
14 perhaps, looking at a personal document or
15 -- or the such.

16 I am sure that I have used it
17 for personal reasons. I don't recall
18 anything specific.

19 Q. Is it your understanding that
20 using that computer for personal work or
21 personal reasons was consistent with your
22 Employee's Practices and Guidelines.

23 A. It's my understanding that --
24 that utilizing a computer is, you know, I
25 -- especially at that point in time,

1 MARK CALLAHAN

2 utilizing a computer is, for personal
3 items, would be consistent, so long as it
4 wasn't in contravention of Brevet's, um,
5 policies and procedures.

6 Q. That kind of assumes the
7 question: What do you mean "so long as it
8 wasn't in contravention of Brevet's
9 policies and procedures"?

10 A. As I sit here right now, I
11 could think of -- of the extent that you're
12 -- you are utilizing that computer in a
13 personal manner, to the detriment of -- of
14 Brevet, whether it be by sharing
15 information, taking information, that would
16 be something that would be in contravention
17 of the policies and procedures of Brevet.

18 Q. What about watching a movie?
19 Is it your understanding that
20 you are permitted to watch a personal
21 movie, that Brevet purchased, for your use
22 at home?

23 A. I -- I don't -- um -- as I sit
24 here right now, I am not sure how one would
25 watch a personal movie on a computer but

1 MARK CALLAHAN

2 maybe that is because I am not that
3 sophisticated. Because this -- I think of
4 a DVD being used to watch a movie and the
5 DVD drives, I am not even sure they are in
6 them now but they have been disabled, when
7 they were in them.

8 Q. You have heard of Netflix, for
9 example, or YouTube?

10 A. I've -- I've heard of Netflix
11 and YouTube.

12 Q. And you had internet access on
13 -- through a browser on your, um, um,
14 computer that was purchased by Brevet for
15 your use at home?

16 A. I have internet access at home
17 on the computer that Brevet is hooked up
18 to.

19 Q. Is it your understanding would
20 it be inconsistent with Brevet's policies
21 and procedures for you to have gone to a
22 web browser and logged on to YouTube or
23 Netflix to watch a movie?

24 A. As I sit here right now, I
25 don't know.

1 MARK CALLAHAN

2 But I have never logged in to
3 YouTube, to watch movies, and I have never
4 logged in to Netflix on my -- my work
5 computer.

6 Q. Do you have a separate home
7 computer that you purchased with your own
8 funds?

9 A. Yes, I do.

10 Q. Is that a laptop or a desk top
11 or do you have more than one?

12 A. More than one.

13 Q. And did you, generally, use
14 those computers for personal work and the
15 Brevet computer for business activities?

16 A. That is correct.

17 I use one of the many -- we
18 have many laptops in the house, I believe
19 at least four laptops that are -- that we
20 use.

21 Q. Did any of your other household
22 members ever use your Brevet-purchased
23 computer?

24 A. As I sit here right now, I am
25 not aware of any other members of the house

1 MARK CALLAHAN

2 using the Brevet-purchased computer.

3 Q. Did they use the other -- one
4 of the other four laptops or whatever
5 other personal devices that you purchased,
6 as what -- what the other household members
7 used, if they wanted to use a computer?

8 A. The rest of my household would
9 util -- utilize, um, the com -- the laptops
10 that -- that we separately purchased, that
11 we owned, or that my children would use
12 laptops that were provided from their
13 school, which is more -- more frequently
14 what they do.

15 Q. In order to use the Brevet
16 computer that you had at home, did you have
17 to log in with your -- with a password, a
18 Brevet cre -- a set of -- a Brevet set of
19 credentials?

20 A. Again, are we talking about --
21 yes. You would have to log in with -- with
22 Brevet credentials.

23 I am not clear as to what
24 timing you are -- you are asking about but
25 it's -- the answer is yes, in cross time.

1 MARK CALLAHAN

2 Q. Yeah. And that -- and that's
3 -- that's a fair clarification.

4 If -- if any of the questions I
5 am asking vary across time, please let me
6 know. I'm -- I'm trying to ask -- I am
7 trying to flag a particular timeframe,
8 where it's obvious to me that -- that it
9 wouldn't matter and if I am not flagging
10 it, at least, you know, my view is that it
11 -- it probably does not but just let me
12 know if your answer is going to change,
13 based on the time period.

14 Um, who chose the log-in
15 credentials for your -- for your log in to
16 that computer; you or someone at Brevet or
17 a combination?

18 A. It's -- it's -- it's my
19 recollection that I am the one who chose --
20 chooses my password, the username is -- is
21 -- my recollection is that it has always
22 been selected by the technology person at
23 the firm.

24 But the password, itself, is
25 something that -- that, um, my recollection

1 MARK CALLAHAN

2 -- that is the way it is now.

3 My recollection, historically,
4 is that I have chosen the password.

5 Q. Okay. And is there a separate
6 username and password that is needed or a
7 separate password that is needed to access
8 any particular functions on the computer
9 after you log into the computer?

10 For example, to access e-mail
11 -- work e-mail, or otherwise, are there
12 particular passwords or usernames or
13 credentials that are needed beyond that
14 initial set?

15 (Whereupon, a short recess was
16 taken.)

17 A. You know, I am thinking about
18 every time, so, if it's -- if you're
19 talking about now, there is a -- it is my
20 understanding there would, for example, be
21 a Microsoft Office, or whatever it is
22 called now, um, credential that would need
23 to be signed in to.

24 I am trying to think of the
25 different things that come up on the

1 MARK CALLAHAN

2 computer that -- that, perhaps,
3 periodically would need to be re-logged
4 into; that it can be Microsoft, it can be
5 Adobe.

6 You know, there -- there's
7 various systems that Brevet utilizes that
8 -- that would require -- that could require
9 additional passwords.

10 It's pretty synchronized now
11 but it may not have been as synchronized,
12 historically.

13 Q. And how would you access your
14 work e-mail, would that be on a native
15 application or would you be, essentially,
16 channelling into your work computer's
17 desktop, in order to access your work
18 e-mail, back, let's say, in 2015, 2016?

19 A. In 2015/2016, my recollection
20 is that I could access e-mail through a web
21 browser, through my iPad, through a phone,
22 a cell phone, through my desktop in the
23 office and through my computer at home.

24 But when I used it at home, my
25 recollection is that I would -- I would

1 MARK CALLAHAN

2 utilize the web browser to access e-mail.

3 Q. So, you wouldn't be using a
4 program, like "go to my P.C.," to tunnel
5 into a work desktop, in order to access
6 your e-mail; right?

7 A. My recollection, as I sit here
8 right now, is that that is something that
9 you could do.

10 But the -- it wouldn't reflect
11 the -- the fastest way at that -- in those
12 dates or in that timeframe, to be able to
13 access e-mails.

14 Q. And were there any markings, on
15 the physical machine, that indicated that
16 the computer was Brevet property, any of
17 the computers at home?

18 A. As I sit here right now, I
19 don't have a recollection as to whether
20 there were or weren't markings on -- on any
21 computers in the, you know, in the 2015/'16
22 timeframe, which, I think, is what you're
23 asking about.

24 Q. How about now?

25 I was asking about the cross

1 MARK CALLAHAN

2 period. So, if that has changed overtime,
3 I would like to know.

4 A. It is my understanding that
5 there are markings on -- on computers at
6 this point in time.

7 Q. Does your computer that you
8 have at your house, that Brevet purchased
9 for you, does that have the markings that
10 you just referenced?

11 A. As I sit here right now, I
12 believe it does.

13 It sits -- the desktop sits in
14 a drawer of the desk, so I haven't --
15 haven't looked at it in quite some time.

16 Q. Do you know when Brevet started
17 putting such markings, or insignia, on the
18 computers?

19 A. As I sit here right now, I
20 don't know when that happened.

21 Q. Was it before or after 2016?

22 A. As -- as I sit here right now,
23 I don't know when it happened.

24 Q. So, it could have been before,
25 it could have been after?

1 MARK CALLAHAN

2 A. As I sit here now, I don't know
3 when it happened.

4 Q. Were you involved in the
5 decision to institute the placement of
6 markings, or insignia, of Brevet, on its
7 new machines that it's purchased?

8 A. As I sit here now, I don't
9 recall being involved in -- in -- in the
10 technology side of things or -- or the
11 decision to mark, or not mark, computers.

12 Q. What type of monitoring was
13 done of the Brevet employee's usage of --
14 of the computers that Brevet purchased for
15 use at home?

16 A. It is my understanding that --
17 that I can speak to, my computers, that I
18 -- that I was provided, periodically, I
19 would be asked to bring it in -- bring in a
20 computer and -- and for -- for updates or
21 -- or, frankly, I don't know what the
22 technology folks were doing. But that
23 would be part of it.

24 At certain times, it was
25 logging in remotely, into my computer.

1 MARK CALLAHAN

2 Again, I am not sure exactly what the
3 technology folks were doing. They had
4 access, to be able to -- to log in to the
5 computer.

6 Q. The technology folks had access
7 to log in to your computer for the purpose
8 of monitoring activity or for the purpose
9 of maintaining your computer, with updates
10 and the like?

11 A. All of the above.

12 Q. Let's --

13 A. And -- and, potentially, more.

14 I mean, frankly, it was a
15 Brevet computer. And the -- that computer
16 is -- is -- would be something that -- that
17 Brevet would have an obligation to
18 preserve, anything that was on there, that
19 that wasn't already, um, saved on the
20 network in the office or the network in the
21 cloud.

22 Q. Well, what -- what -- what is
23 the basis for your statement that Brevet
24 had an obligation to maintain anything on
25 that computer?

1 MARK CALLAHAN

2 A. It is my understanding that --
3 that similar to the discussion where we
4 were talking about earlier, where, with
5 respect to Global Relay and the -- the
6 requirement to maintain all e-mail
7 documentation, or e-mail communication,
8 Brevet, similarly, has a requirement to
9 maintain all documents related to Brevet
10 materials.

11 Q. Oh. Related to Brevet
12 materials? I understand.

13 My -- I guess my question
14 wasn't clear enough.

15 Brevet didn't have any
16 obligation to maintain, um, any files, um,
17 on the computer, that you are talking
18 about, to the extent those files were not
19 business files; right?

20 A. As I sit here right now, I am
21 not sure how Brevet would determine whether
22 or not a file was a business file or not a
23 business file, without -- without looking
24 at it.

25 I -- I -- I don't believe for

1 MARK CALLAHAN

2 -- you're asking about me. I didn't
3 maintain personal files on -- on that -- on
4 the Brevet computer.

5 But still, if -- if they are
6 doing -- they are looking -- looking at a
7 computer and trying to determine what to
8 back up? I don't know how one determines
9 what is or isn't personal.

10 Q. Well, who is in charge of doing
11 that, at Brevet?

12 A. Who is in charge of doing what?

13 Q. Of maintaining the backups of
14 the files that you are talking about.

15 A. It's my understanding that that
16 is something that is, um, coordinated with
17 compliance and technology.

18 Q. Do you make those decisions?

19 A. It's -- it's my under -- as I
20 sit here right now?

21 Q. Yeah.

22 A. I did not make those decisions.

23 Q. What about as you sat there, in
24 2016?

25 A. There -- over time? There have

1 MARK CALLAHAN

2 been times when I have made those -- those
3 decisions.

4 At times, when there were fewer
5 people at Brevet or fewer, um -- yeah,
6 fewer people at Brevet.

7 Q. What qualifications, Mr.
8 Callahan, with all due respect, did you
9 have to make the determination with respect
10 to what backups needed to be kept of files
11 that were housed on the machines that
12 employees had at home, purchased by Brevet,
13 if you just told us that you didn't even
14 know how you would go about determining
15 what files were Brevet-related and what
16 files were personal-related?

17 A. As -- as I sit here, you know,
18 right now and I think about okay, how do
19 you determine whether something is personal
20 or business-related, I -- it's -- it's
21 unclear to me how one determines that,
22 without first looking at the file or -- or,
23 um, you know, or -- or copying the file, to
24 look at it at a -- at a later time.

25 One can endeavor to do it's

1 MARK CALLAHAN

2 best to, um, try but it's a -- it's
3 something where the personal files
4 shouldn't be on Brevet's computer, you
5 know, that is really the first thing.

6 The -- the second thing is that
7 it's -- it's clear to Brevet's employees
8 that they should have absolutely no
9 expectation of privacy, with respect to any
10 computer, with respect to any -- any
11 systems that -- that Brevet utilizes, with
12 respect to any -- any Brevet materials, um,
13 and -- and -- and I would say furthermore,
14 the employees understand that -- that
15 there's, you know, no expectation that it
16 -- that it is okay for them to be copying,
17 distributing, stealing documentation of
18 Brevet materials.

19 Q. What is the basis for your
20 testimony about what employees understand,
21 apart from yourself?

22 A. It's my understanding that --
23 that Brevet employees respect the rules. It
24 is my understanding that Brevet employees,
25 um, take seriously policies and procedures.

1 MARK CALLAHAN

2 It is my understanding that -- that Brevet
3 employees appreciate that when they are
4 asked to review and understand a document
5 and -- and when they are asked to
6 acknowledge their review of a document, my
7 understand -- my belief is that -- is that
8 Brevet employees take that, um -- take that
9 seriously.

10 And -- and by -- by doing that,
11 it's -- it is -- it is clear to Brevet
12 employees that there is no expectation of
13 privacy.

14 Q. When you say "it is my
15 understanding," do you mean to say you
16 would hope or are you telling me that you
17 have a basis for your understanding,
18 separate and apart from your hope or
19 expectation?

20 A. As I sit here right now, I
21 believe I have a basis for my -- for my
22 understanding.

23 Q. What is that basis?

24 A. The basis is, you know, as I
25 sit here right now, that basis is in

1 MARK CALLAHAN

2 Brevet's policies/procedures employee
3 handbook.

4 Q. Your employee handbook and
5 policies and procedure have statements with
6 respect to whether or not employees do,
7 indeed, have expectations or don't have
8 expectations of privacy, for example?

9 A. It is my understanding that --
10 that whether it's using those words, it's,
11 certainly, um, it's certainly, um, the
12 topic is certainly in there and the fact
13 that, um, that Brevet has the -- the right
14 to -- to access their, um -- the -- access
15 its computers, its systems, its -- its
16 materials is something that I believe is
17 incorporated those documents.

18 Q. I believe you testified that it
19 was improper for an employee, such as
20 yourself, to store any personal work
21 documents, personal documents on the
22 computer.

23 Did I get that right?

24 MR. SOLOMON: I object to the
25 question.

1 MARK CALLAHAN

2 A. Yeah. I -- I -- my
3 recollection is that I -- yeah. I -- I
4 already answered it but didn't answer it in
5 that manner.

6 I -- I believe that it was -- I
7 believe that I had stated -- yeah, I don't
8 recall exactly what the question was but
9 the -- the -- it was more along the lines
10 of to the extent that you are using the
11 computer for any personal matters?

12 My -- my focus was on the --
13 was that you weren't doing it to the
14 detriment of Brevet. And most importantly,
15 doing it to the detriment of Brevet's
16 investors.

17 Q. Set -- setting aside doing
18 whatever it is you are referring to, to the
19 detriment of Brevet; "yes" or "no," was it
20 fine -- was it in compliance with Brevet
21 policies and procedures, in your view, for
22 an employee to store, say, a personal poem
23 that they drafted on the computer that
24 Brevet had purchased for use at home?

25 A. Yeah. As I sit here right now,

1 MARK CALLAHAN

2 without you showing me the -- the policies
3 and procedures, you know, the specifics of
4 that, I -- I wouldn't -- I wouldn't know
5 whether or not that was, or wasn't, within
6 the -- within those policies and
7 procedures.

8 Q. What about personal e-mail
9 accounts; G mail, AOL, Yahoo, e-mail
10 accounts that can be accessed through a
11 browser; "yes" or "no," was it in
12 compliance with Brevet policies and
13 procedures for employees, such as yourself,
14 to access their personal e-mail
15 communications using a browser on the
16 machine that Brevet had purchased?

17 A. It's -- it's -- as I sit here
18 right now, it is my understanding that that
19 -- I am not even sure that is still the
20 case today.

21 But at some point, yes, it was
22 -- it was permissible, for Brevet
23 employees, to access their personal e-mail,
24 um, um, accounts through a web browser and,
25 you know, it was -- I believe it's clear to

MARK CALLAHAN

Brevet employees that accessing those -- those, um, e-mails through the computer, through the Brevet computer, also generates some -- some files on that computer, which -- which could -- could provide -- provide for some personal information being on the -- being on the Brevet computer, which is something that -- that, um, I believe Brevet -- I believe it's clear to Brevet employees that that is the case.

Q. Why do you believe that?

A. As I sit here right now, as we discussed, I believe it's in the policies, procedures and the employee handbook.

Q. You believe that the policies, procedures and employee handbook state that if an employee accesses a personal e-mail file, using a browser on their computer that any temporary or other files that are generated, in connection with that access, are things that are going to be stored on their computer and accessible by Brevet?

A. As I sit here right now, that is not at all what I just said.

1 MARK CALLAHAN

2 Q. Well, do you believe what I
3 just said?

4 A. Do I believe that -- that what
5 you said is specifically in Brevet's
6 policies and procedures? No.

7 Do I believe that,
8 conceptually, if that -- that any file, no
9 matter where it comes from, that ends up on
10 a Brevet computer, employees should have an
11 expectation that Brevet has a right and an
12 obligation to review it, to determine
13 whether or not it's something that should
14 be preserved.

15 Q. Who told you that Brevet has an
16 obligation to review any file that appears
17 on its machine?

18 A. As I sit here right now, I
19 guess I wouldn't say it has to -- has to
20 review but I would change that to be "has
21 to preserve."

22 Q. Who told you that Brevet has an
23 obligation to preserve any file that
24 appears on a Brevet computer?

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 believe that is -- when you say "every file
3 that is on a Brevet computer," to the
4 extent that Brevet doesn't preserve
5 something, one -- I believe that one would
6 have to review it, to determine they didn't
7 have to preserve it.

8 But my understanding of the
9 requirements of the SEC, with respect to
10 the registered -- being a registered
11 Investment Advisor, is that all documents
12 are required to be preserved for some time
13 period. I don't know how many years but
14 for some time period.

15 As to who communicated that? I
16 -- I don't recall specifically but it would
17 have included chief Compliance Officers and
18 outside counsel and outside service
19 providers.

20 Q. Is it your testimony that one
21 or more CCO's informed you that files that
22 appeared on machines owned by Brevet,
23 regardless of whether those files had
24 anything to do with Brevet business, they
25 needed to be preserved by Brevet, in order

1 MARK CALLAHAN

2 to comply with their obligations under the
3 Registered Advisement Law?

4 A. As I sit here right now, it is
5 my recollection that -- I am not sure who
6 it is from, it is my recollection that it
7 has been communicated to me, as I
8 understand it, that all -- all files
9 related to the business have to be
10 preserved for some time period that I don't
11 know and to the extent that a file is not
12 being preserved, I believe that -- and I
13 don't know what the process is, I believe
14 there would be a process to determine,
15 definitively, as to that -- that that
16 document or that file should not be
17 preserved.

18 Q. If your child went on to your
19 computer, while you stepped out to use the
20 restroom, and typed a one -- you know, a
21 shopping list and saved it on the computer,
22 is it your view that Brevet has an
23 obligation to store that file until it
24 determines that that file has nothing to do
25 with Brevet business just because that file

1 MARK CALLAHAN

2 was stored on a machine owned by Brevet?

3 A. It's my understanding that
4 Brevet looks to do everything to the -- to
5 the -- to the best of its abilities.

6 And so, therefore, in that
7 situation, I -- I think it would make sense
8 to preserve everything.

9 You don't have to review it but
10 why not preserve everything. And to the
11 extent it's needed in the future, to the
12 extent that the SEC requests something, it
13 would be an available file to be reviewed.

14 At which point, if it came
15 across as hitting a key word, at that point
16 in time, it would, likely, get determined
17 that it was, obviously, not relevant.

18 It seems to me that it would be
19 a waste of time to be making those
20 decisions, in realtime, and it would be a
21 better use of time to -- to just backup
22 everything.

23 Q. Is that your own judgment that
24 --

25 A. And --

1 MARK CALLAHAN

2 Q. Let me just finish the
3 question.

4 Is it your own judgment that in
5 the interest of the most efficient use of
6 time, you're going to err on the side of
7 preserving communications regardless of
8 whether they have anything to do with
9 Brevet business because you think that
10 would be a better way to plant vis-à-vis
11 the rules and regulations?

12 A. It is my understanding, as I
13 sit here right now, that the rules and
14 regulations require the preservation of --
15 of documents.

16 I was --

17 Q. Do you have an understanding
18 that the --

19 A. I was making a follow-on
20 observation, which I probably shouldn't
21 have, that it would seem to be that it
22 would be burdensome to be reviewing all --
23 all documents, in -- in realtime, to
24 determine yes, no, by document, whether or
25 not it should be preserved or not and

1 MARK CALLAHAN

2 wouldn't it be the, um, most-conservative
3 approach just to backup everything.

4 Q. Well, you understand, when you
5 say: The "most-conservative approach" that
6 from the perspective of the individual
7 whose files they are, be it theirs or their
8 family's, that would, actually, be the
9 most-liberal approach; right?

10 MR. SOLOMON: I object to the
11 question.

12 A. Yeah. As I sit here right now,
13 if -- that is -- these are files that
14 shouldn't be on Brevet's computers and
15 clearly, employees understand that they
16 have no expectation of privacy.

17 So, why would you be putting
18 files, on Brevet's computers, that you felt
19 were personal or that you didn't want to
20 allow Brevet to see, if you knew that
21 Brevet had an obligation to preserve and --
22 and potentially, in the future, review
23 those documents.

24 Q. I'll apologize in advance for
25 retreading but I believe you just gave me a

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MARK CALLAHAN

different answer, which is a question that I had asked a few minutes ago, so let me make sure I can clarify: "Yes" or "no," is there something wrong with you, or any other Brevet employee, storing a personal file; a shopping list, a recipe, a picture, on the computer that Brevet purchased for that employee's use at home?

MR. SOLOMON: Asked and answered.

THE WITNESS: Sorry.

A. And I can hear you, Mr. Cyrulnik, you don't have to raise your voice.

The, um -- and now I can't remember. I was listening to the tone of your voice and I missed the question.

Q. Yeah, I would ask you to, please, focus on the substance.

The tone is just meant to make sure that you are answering the question because I believe I got two different answers to this question.

So, I would agree with Mr.

1 MARK CALLAHAN

2 Solomon's objection, which is rare, that it
3 was asked and answered. But I believe you
4 gave me a different answer the last time we
5 spoke, which is why I am asking it and I am
6 asking ask it a little more slowly than
7 usual.

8 My question is a yes-or-no
9 question.

10 "Yes" or "no," is it your view
11 that there is something wrong with a Brevet
12 employee storing a personal file; a
13 shopping list, a recipe, a picture, on the
14 computer that Brevet purchased for that
15 employee's use at home?

16 MR. SOLOMON: Asked and
17 answered.

18 MR. CYRULNIK: Agreed;
19 sustained.

20 A. It is my understanding that in
21 order to determine whether it is right or
22 wrong, you go to the policies and
23 procedures.

24 But the point, in my second
25 response, was that if it's a document that

1 MARK CALLAHAN

2 an employee doesn't want to have reviewed
3 by Brevet, it shouldn't put it on a Brevet
4 computer or a Brevet machine.

5 Q. I appreciate that point but
6 that is not the question I asked you.

7 I want to know, "yes" or "no,"
8 whether or not you think there is something
9 wrong with doing it. Do you think it is or
10 is not a violation of some rule,
11 regulation, policy or procedure for a
12 Brevet employee to store a personal file on
13 the machine that we are talking about.

14 Yes or no?

15 MR. SOLOMON: Asked and
16 answered.

17 THE WITNESS: Yeah.

18 A. As -- as I sit here right now,
19 I would -- I am happy to go through the
20 policies and procedure with you, to figure
21 out if it -- if there is something specific
22 that makes that not permissible.

23 I don't know. It doesn't seem
24 to me that having a grocery list on the --
25 on the computer would be something that

1 MARK CALLAHAN

2 there would be a policy for but I am happy
3 to look with you.

4 Q. You and Mr. Monticciolo had
5 your own independent access to Brevet's
6 entire e-mail system; correct?

7 A. At various -- as I sit here
8 right now, at various points in time, I
9 have had various access rights, with
10 respect to Brevet e-mail system.

11 Q. Have you had full access to
12 view any e-mail that was ever sent or that
13 was received on the Brevet e-mail system?

14 A. As I sit here right now, I
15 believe at times, I have had full access to
16 Global Relay, which is the e-mails --
17 e-mail depository to be utilized.

18 Q. Do you currently have that
19 access?

20 A. As I sit here right now, I have
21 access to Global Relay. I don't know the
22 level of that access.

23 Q. Do you know whether anybody,
24 apart from yourself or Mr. Monticciolo, had
25 that level of access, to view any e-mail

1 MARK CALLAHAN

2 through the Global Relay system?

3 A. As I sit here right now, I
4 don't know, over time, who has had access
5 but I believe it would be compliance and
6 legal personnel that would also have access
7 such as that.

8 Q. And if you -- when -- when you
9 had that access, you had the capability of
10 reviewing any Brevet e-mail that you wanted
11 to review, without anybody knowing about
12 it; right?

13 A. As I sit here right now, I
14 believe when I had full access, I would
15 have the ability to review, um, all e-mails
16 -- e-mails to and from Brevet e-mail
17 addresses.

18 I don't know whether or not
19 there is an ability for others to know
20 whether I have done it.

21 Q. Have you exercised that ability
22 at any point in time?

23 A. Have I exercised the ability to
24 review Brevet e-mails?

25 Q. Yeah.

1 MARK CALLAHAN

2 Have you secretly gone and
3 looked at people's e-mails, in the Global
4 Relay system, without them knowing about
5 it?

6 MR. SOLOMON: I object to the
7 question.

8 A. Yeah. As I sit here right now,
9 I wouldn't characterize it as secretly.

10 It's something, again, if you
11 go back to the policies and procedures and
12 the handbook, it is clear to -- to, um, to
13 employees that they have no expectation of
14 privacy, with respect to anything that they
15 have sent to or from a Brevet e-mail
16 address.

17 Q. Let me clarify the question.

18 What I mean by "secretly" is:
19 Have you gone without informing a
20 particular Brevet employee, have you gone
21 into their e-mails, using Global Relay, to
22 review one or more of their communications,
23 without their knowledge, that you were
24 doing so?

25 A. As I sit here right now, I

1 MARK CALLAHAN

2 believe I -- I have -- utilized Global
3 Relay, to search various, um, e-mail
4 addresses, with various searches, and, you
5 know, authorization or or not,
6 authorization is not required to do so.

7 Q. Can you describe for me the
8 frequency and the circumstances under which
9 you use that access, to look through
10 people's e-mails?

11 MR. SOLOMON: I object to the
12 question.

13 MR. CYRULNIK: It's compound so
14 I will break it down.

15 Mr. Solomon's right.

16 Q. Let's start with the frequency:
17 Can you describe for me the frequency with
18 which you use the access that you just
19 described, to look through one or more
20 Brevet employee's e-mails, other than your
21 own?

22 A. Well, as I sit here right now,
23 the -- you know, I would say I used that --
24 I don't know. I don't know. I would say
25 that I use it frequently. I don't know how

1 MARK CALLAHAN

2 to describe what "frequently" is.

3 It is something that I would
4 say gets used a couple -- few times a
5 month, at least.

6 Q. Okay. And with respect to the
7 circumstances that would prompt you to do
8 so, can you describe those circumstances to
9 me? Is it just -- is it anything ranging
10 from shared curiosity as to what an
11 employee is talking about to a particular
12 subject matter you were interested in
13 looking at?

14 A. As I sit here now, with respect
15 to what I would look at, as to what
16 compliance would have a different --
17 different view, I would be looking for -- I
18 can be utilizing it, to find any -- any --
19 as we discussed earlier, time -- timeframe
20 of e-mails.

21 So, if I am looking for e-mails
22 that, perhaps, predate what is saved in
23 Outlook files or if employees come to me
24 and ask for a search of -- of folder
25 e-mails or if we have had employees that

1 MARK CALLAHAN

2 have left and -- and e-mail correspondence,
3 with respect to a transaction is -- is
4 related to -- is -- is in their e-mails and
5 new -- new employees are looking for -- for
6 that information.

7 Or it can be looking for
8 deceitful activities.

9 Q. Have you ever gone to an
10 employee's e-mail account, without their
11 knowledge, through the Global Relay system,
12 to view messages just because you were
13 curious to find out what they were talking
14 about?

15 A. As I sit here right now, I
16 believe that most of the instances would be
17 without the -- you know, the sender or
18 receiver's knowledge.

19 Q. And how about the impetus for
20 doing so?

21 Have you ever done so just
22 because you were curious as to what types
23 of communications the employee was having?

24 A. As I sit here right now, I
25 don't know what you mean by "curious," as

1 MARK CALLAHAN

2 it makes it -- you're, kind of, implying
3 that there is -- that there is -- that
4 there is -- it's baseless and, I guess, my
5 -- my view is that there is no reason -- I
6 don't need a justification, a reason,
7 permission to review any, you know, Brevet
8 e-mail correspondence.

9 That is something that it is
10 made clear to -- to employees: That all
11 communications, e-mail or otherwise, we are
12 able to -- to, um, view, monitor, you know,
13 and that is something that -- that is done
14 often.

15 Q. Okay.

16 MR. SOLOMON: Can we just get a
17 time of how long have we been going?

18 MR. CYRULNIK: We can take a
19 break in about ten minutes.

20 MR. SOLOMON: No. No. No. I
21 am just wondering on -- on -- on the
22 clock how long we have been going?

23 THE VIDEOGRAPHER: We have been
24 going -- stand by.

25 (Whereupon, a short recess was

1 MARK CALLAHAN

2 taken.)

3 THE VIDEOGRAPHER: We have
4 another fifteen minutes on the record
5 and that would be seven hours.

6 So, we have been going for six
7 hours and forty-five minutes, give or
8 take a few seconds.

9 MR. SOLOMON: No. I wasn't
10 asking for a break.

11 Q. Have you ever -- separate and
12 apart from the Global -- Global Relay --

13 MR. CYRULNIK: Withdrawn.

14 Q. The Global Relay system would
15 allow you to view conversations or -- or
16 exchanges that Brevet employees were having
17 over their Brevet e-mail addresses only; is
18 that correct?

19 A. It is my understanding that the
20 Global Relay system captures any e-mail
21 sent to or from a Brevet Capital e-mail
22 address.

23 Q. Okay. So, with the exception --
24 you know, setting apart e-mails sent to or
25 from Brevet e-mail addresses, the Global

1 MARK CALLAHAN

2 Relay system doesn't give you, Mr.
3 Callahan, the ability to view any other
4 communications that Brevet employees are
5 engaged in, without -- without the
6 knowledge of that employee; is that
7 correct?

8 A. It is my understanding that the
9 Global Relay system has some sort of a
10 database of all of the e-mails, from and
11 to, a Brevet e-mail address and it, thus,
12 enables -- enables users to be able to
13 search parameters related to the e-mails
14 that are in -- in that database.

15 Q. What about a Brevet employees
16 personal e-mails?

17 Do you have the ability to read
18 those, without their knowledge?

19 A. It is my understanding that any
20 e-mails that are personal, in nature, that
21 are sent, from or to a Brevet e-mail
22 address, would be reviewable by -- would be
23 eligible to be reviewed by Brevet, as well
24 as any e-mail that's on a Brevet computer
25 or -- or other equipment.

1 MARK CALLAHAN

2 Q. When you say "e-mail that is on
3 a Brevet e-mail or other equipment," are
4 you referring to any e-mail that -- system
5 that is accessed, via a web browser, that
6 is open on a Brevet computer?

7 Is it your understanding that
8 you have free reign to read those e-mails,
9 as well?

10 A. It's -- what I was referring to
11 is if there is an e-mail that is somehow
12 saved on to a computer, that is what I was
13 referring to.

14 Q. Why is it significant that the
15 e-mail be saved on the Brevet computer?

16 A. As I sit here right now, I
17 don't -- I don't know what makes it
18 significant, except for the fact that if
19 it's -- I -- I -- again, I am not the tech
20 guy. But I believe -- I --

21 THE WITNESS: Excuse me.

22 A. If the file isn't saved, does
23 it -- does it exist on it? I don't -- I
24 don't know.

25 Q. What about e-mails that are not

1 MARK CALLAHAN

2 saved on the computer but are accessible
3 via a browser?

4 Right? You go to yahoo.com,
5 you go to gmail.com and you access your
6 e-mails, it's not -- is it your
7 understanding that all of those e-mails
8 immediately become saved on the machine
9 which has the browser that is accessing
10 them?

11 A. As I sit here right now, again,
12 I am not the tech guy, I don't know what
13 happens in the inner-workings of a
14 computer, to know what happens when
15 somebody opens a -- you know, a personal G
16 mail or whatever -- whatever e-mail, as to
17 what happens, whether or not a file may, or
18 may not, get saved, just somewhere on -- on
19 the computer.

20 That is -- that is beyond my
21 knowledge.

22 Q. Okay. So, you wouldn't know
23 whether or not, in your view, you can read
24 those e-mails until you find out whether or
25 not they are, indeed, being saved on a

1 MARK CALLAHAN

2 computer.

3 Is that fair?

4 A. It's my understanding that --
5 again, I don't know -- I don't know when a
6 -- I don't know what happens in the
7 network's computer.

8 Right? In my layman's term,
9 what I understand, when you save a file to
10 the computer, then, that -- then that file
11 you can go to and -- and look at.

12 I don't know what happens in
13 the intricacies of web browsers and G mail
14 and all of that stuff.

15 Q. Now, in October of 2016, did
16 you bother to find out the intricacies of
17 what exactly happens with personal e-mails
18 and documents that are accessed on a
19 machine, in order to determine what you
20 were permitted to and what you were not
21 permitted to do, vis-à-vis Paul Iacovacci's
22 computer, or the computer that Brevet had
23 purchased for Paul Iacovacci's use at home
24 in June of 2016?

25 MR. SOLOMON: I object to the

1 MARK CALLAHAN

2 question.

3 If you were kind enough to fix
4 the compounding before, you want to
5 do it to this one or no?

6 MR. CYRULNIK: The other
7 compounding was clear to me. This
8 one was not.

9 But I am happy to restate the
10 question.

11 MR. SOLOMON: Just be clear:
12 What computer you're clear about?

13 MR. CYRULNIK: What did you
14 say?

15 MR. SOLOMON: Just be clear
16 what computer you're talking about.

17 It's not clear from your
18 question and, therefore, I am
19 objecting.

20 MR. CYRULNIK: No.

21 I am not going to restate it,
22 to make sure we're -- we are talking
23 about the same thing.

24 I am referring Mr. Callahan to
25 Paul Iacovacci -- the computer that

1 MARK CALLAHAN

2 Paul Iacovacci was using at home, the
3 one that was purchased by Brevet.

4 I believe we can refer to it as
5 the Dell OptiPlex.

6 Does that work for you?

7 A. Um, that is fine.

8 Q. Okay. And my question is: You
9 were talking about not having a full grasp
10 of the details as to what exactly happens
11 with respect to certain files that are
12 accessed on a computer because you were not
13 the tech guy.

14 And my question to you was:
15 Before you, either, reviewed or directed
16 someone to review Mr. Iacovacci's files, on
17 the Dell OptiPlex, did you bother to get a
18 full understanding of the nitty-gritty
19 details associated with what files he was
20 accessing, via a browser, what -- what
21 files were being stored on the machine and
22 any other related issues that you thought
23 were important to know before you reviewed
24 his files?

25 MR. SOLOMON: I object to the

1 MARK CALLAHAN

2 question.

3 A. As I sit here right now, I -- I
4 recall that Mr. Lan, upon preserving
5 documents on the -- on Brevet's Dell
6 OptiPlex, that he highlighted that he had
7 carefully and intentionally tried to avoid
8 any of the -- what looked like personal
9 documents on Brevet's Dell OptiPlex and
10 focused on preserving Brevet materials;
11 right? The same Brevet materials that I
12 was talking about earlier that -- that all
13 employees, including Mr. Iacovacci, had --
14 had -- had -- understood that there's no
15 expectation of privacy.

16 Q. Let's see if we can take a step
17 back.

18 Mr. Callahan, you directed Mr.
19 Lan to log in to the Dell OptiPlex, in
20 October of 2016, to download files for
21 purposes of copying those files; is that
22 correct?

23 A. As I sit here right now, my --
24 my recollection is that, you know, the --
25 the -- the intention was not to -- it

1 MARK CALLAHAN

2 wasn't search and destroy. It was
3 preservation.

4 It was preserving Brevet
5 materials and my -- my recollection is that
6 Mr. Lan had had conversations with others
7 at Brevet, about the need to -- to backup,
8 to preserve those files and -- and Mr. Lan
9 asked if he should do it, which I -- which
10 I told him "yes."

11 Q. And Mr. Callahan, the buck
12 stopped with you? You were the one who
13 ordered the intrusion into the computer?

14 MR. SOLOMON: I object to the
15 question.

16 Q. Do you agree or disagree?

17 A. As I sit here right now, the --
18 as -- as -- as I just said, my recollection
19 is that there were conversations that were
20 happening away from me about the need to do
21 it and then, ultimately, I gave the final,
22 affirmative response to Mr. Lan, to
23 preserve Brevet's materials, as, you know,
24 as we have gone through before; right?

25 That on Brevet's Dell OptiPlex

1 MARK CALLAHAN

2 and that -- and that Paul had -- had
3 acknowledged, as well as all employees had
4 acknowledged that they had no expectation
5 of privacy, with respect to -- to anything
6 on their computer and I believe that Mr.
7 Lan had, you know, when -- went above and
8 beyond, in trying to avoid any of the
9 personal materials that were -- that --
10 that sounds like we are on the -- we are on
11 Brevet's Dell OptiPlex.

12 Q. Well, we will get to that.

13 But, please, describe for me
14 the conversations that you were just
15 referencing that happened outside of your
16 presence, with respect to Mr. Lan logging
17 in to -- the need for Mr. Lan to log in to
18 Mr. Iacovacci's computer without his
19 knowledge?

20 MR. SOLOMON: I object to the
21 question.

22 You're misstating the record.

23 You're saying Mr. Iacovacci's
24 computer.

25 Be careful as to what you're

1 MARK CALLAHAN

2 saying.

3 MR. CYRULNIK: Yeah.

4 That -- that is just going to
5 be a natural step.

6 You can replace Mr. Iacovacci's
7 computer with the Dell OptiPlex for
8 that question.

9 Q. Do you need me to ask you that
10 again?

11 A. Yes, please.

12 Q. You referenced a few moments
13 ago conversations that, ultimately, lead to
14 your ultimate decision to authorize Mr. Lan
15 to download materials.

16 Do you recall, generally,
17 testifying about those conversations?

18 A. As -- as I sit here right now,
19 I recall him communicating that to you,
20 yes.

21 Q. Can you tell me what
22 conversations you are referring to?

23 I am asking for what other
24 individuals were involved with that
25 decision, when those conversations took

1 MARK CALLAHAN

2 place, relative to your ultimate say so and
3 what the substance of those conversations
4 were?

5 Whatever you're aware of.

6 A. As -- as I sit here right now,
7 my recollection is that Mr. Lan had
8 conversations with Mr. Monticciolo and I
9 don't know the timing of those
10 conversations but I -- I know that -- that
11 Mr. Lan, um, approached me about -- about,
12 um, I guess, that final decision to
13 preserve our documents and, um, it was part
14 of the conversation that it was something,
15 as well, that Mr. Monticciolo was
16 expecting, pursuant to our obligations,
17 with respect to preserving files.

18 Q. Did you have ultimate authority
19 and preventative --

20 (Whereupon, a short recess was
21 taken.)

22 MR. CYRULNIK: I'm sorry about
23 that.

24 Hold on.

25 (Whereupon, a short recess was

1 MARK CALLAHAN

2 taken.)

3 Q. Did you have ultimate
4 authority, at Brevet, relative to the
5 authority that Mr. Monticciolo had?

6 A. As -- as I sit here right now,
7 it's -- it's, um, um, my recollection is
8 that it would depend on -- on what
9 authority you would be talking about,
10 depending on what -- what is being asked
11 but I would say that for the most part, at
12 that point in time, we would prefer to do
13 things that we were both supportive of.

14 Q. I guess what I am struggling
15 with and I'm trying to understand: If Mr.
16 Monticciolo had discussed this with Mr. Lan
17 and told him his view as to what he needed
18 to download from Mr. -- from the Dell
19 OptiPlex, without Mr. Iacovacci's
20 knowledge, why did Mr. Lan need to get the
21 ultimate consent, or say so, from you?

22 A. As I sit here right now, it's
23 not -- I wasn't -- it wasn't -- my under --
24 my understanding is that -- my recollection
25 is that he was not coming, to me, for the

1 MARK CALLAHAN

2 ultimate final sign off.

3 It was to -- to ensure
4 consistency, amongst myself and Doug.

5 Q. I see.

6 So, it's your view that it
7 wasn't really you who gave the ultimate --
8 who made the ultimate decision but that Mr.
9 Lan did check in with you, prior to
10 engaging in the activity, to ensure that
11 your view was consistent with the one that
12 Doug Monticello had expressed to Mr. Lan?

13 Is that a fair summary?

14 A. As I sit here right now, it's
15 -- you know, I guess it's depending on --
16 on what ult -- what you mean by "ultimate"?

17 But was my decision the final?
18 Was it the last decision? Yes.

19 Q. Would you have made that
20 decision without Mr. Monticciolo -- without
21 knowing Mr. Monticciolo's view?

22 A. As I sit here right now, I
23 don't believe I -- I would have made that
24 decision, without -- without Mr.
25 Monticciolo, um, being in agreement.

1 MARK CALLAHAN

2 MR. CYRULNIK: Okay. I -- I
3 wanted to finish this line of
4 questioning but I just got a note
5 from the Court Reporter that she
6 needs a break and I'm happy to give
7 everyone a break.

8 Let's go off the record for a
9 second.

10 THE VIDEOGRAPHER: Going off
11 the record at 5:36.

12 This marks the end of Media
13 Unit Number 6.

14 Stand by. Stand by.

15 (Whereupon, a short recess was
16 taken.)

17 THE VIDEOGRAPHER: We are on
18 the record at 5:48.

19 This marks the beginning of
20 Media Unit Number 7.

21 Thank you.

22 MR. SOLOMON: Can you see,
23 Jason?

24 THE WITNESS: He is there.

25 MR. SOLOMON: Are we waiting

1 MARK CALLAHAN

2 for anything else?

3 THE VIDEOGRAPHER: We are on
4 the record.

5 MR. SOLOMON: Okay. Thank you.

6 MR. CYRULNIK: Very good.

7 My audio was off.

8 Can everyone hear me?

9 MR. SOLOMON: Yeah.

10 MR. CYRULNIK: Okay. Are we
11 ready to go?

12 You wanted -- you wanted a
13 little bit of a -- of an update?

14 So, yeah, look, I have -- I
15 think we have gone through a good
16 portion of the outline. I have, you
17 know, a few things left on this
18 subject and then, I have the
19 30(b)(6). I want to go to the
20 30(b)(6) topics and see what, you
21 know, hasn't been addressed, through
22 this testimony, although I think we
23 have covered most of the topics
24 already.

25 But that is -- that is what my

1 MARK CALLAHAN

2 plan is. My plan is to finish this
3 up and, then, you know, run through
4 the 30(b)(6) topics and see what
5 specific questions I -- I need to get
6 the witness' view on, in the 30(b)(6)
7 capacity, on -- on anything that he
8 hasn't already covered.

9 MR. SOLOMON: Okay. Let's --
10 let's -- let's be reasonable.

11 We have -- we have a person who
12 has been sitting here all day. You
13 are done with your seven hours.

14 Can you give us a time -- how
15 much time -- how much more time do
16 you need?

17 I think you have a sense of the
18 cadence here.

19 MR. CYRULNIK: Yeah, I do.

20 I am just -- I am reluctant to
21 do it because I -- I always find that
22 if -- if that ends up being
23 inaccurate, it ends up setting the
24 wrong expectations.

25 My goal would be to try to

1 MARK CALLAHAN

2 complete the deposition in the next
3 hour and fifteen minutes.

4 MR. SOLOMON: You know, I think
5 that's not -- that -- maybe you
6 should turn to the 30(b)(6) topics
7 because this doesn't feel reasonable.

8 And that brings us to after
9 7:00 and if you're going to be --
10 well, I don't want to be taking time
11 doing this, either, and I appreciate
12 that.

13 I thought if you could finish
14 -- finish in thirty minutes but
15 finish, we would be happy to sit.

16 But otherwise, maybe we should
17 just complete the deposition and
18 schedule a time for you to talk to
19 about the 30(b)(6) topics, insofar as
20 you haven't already.

21 I -- I -- I just -- I looked
22 through them on the break, too, to
23 see what you covered.

24 MR. CYRULNIK: I think -- I
25 think -- I think you're probably

1 MARK CALLAHAN

2 right, although, I just -- I -- I
3 have to go through them.

4 I am happy to do whatever you
5 think is best for Mr. Callahan and
6 for you.

7 As I said, I think I can
8 complete the -- the non-30(b)(6)
9 pieces, in approximately the next,
10 you know, thirty to thirty-five
11 minutes.

12 So, why don't we do that and
13 see where we are and you will tell me
14 how you would like to finish, whether
15 you want to designate someone else on
16 some of the topics, that we didn't
17 cover.

18 And again, I agree with you. I
19 don't think it's voluminous but I am
20 trying to multi-task and, you know,
21 make sure --

22 MR. SOLOMON: No. Fair enough.

23 Fair enough and also, it's Zoom
24 and colleagues aren't even there.

25 But I do get all of that but I

1 MARK CALLAHAN

2 -- I have a witness who -- who has
3 put himself out and he is still here.

4 I am going to let him go in
5 thirty minutes and we will figure out
6 if there is anything more to do.

7 Please continue.

8 Go ahead. A Catskill joke:
9 Answer as fast as you can.

10 MR. CYRULNIK: Are we ready to
11 go back on the record?

12 THE VIDEOGRAPHER: We have been
13 on the record.

14 MR. CYRULNIK: Oh. I didn't
15 even know that. Okay.

16 Q. Well, Mr. Callahan, we are
17 talking about the decision to log into Mr.
18 Iacovacci's -- to -- to the Dell OptiPlex
19 and download the materials that were --
20 that -- that Mr. Lan came across.

21 I believe that you testified
22 that Mr. Lan, in your view, or to your
23 knowledge, undertook steps to ensure that
24 he wasn't downloading anything that was not
25 Brevet related or wasn't personal.

1 MARK CALLAHAN

2 Did I hear you correctly?

3 A. Two things there; it's the
4 computers -- Brevet Dell OptiPlex and, um,
5 it's my understanding that Mr. Iacovacci
6 did not preserve all documents on Brevet's
7 -- from Brevet's Dell OptiPlex.

8 It's -- it's my understanding
9 that he attempted to identify items that
10 were -- that may have been personal and
11 did not --

12 MR. SOLOMON: You said

13 "Mr. Iacovacci."

14 Do you mean that?

15 THE WITNESS: Sorry, no.

16 MR. SOLOMON: Why don't you, if
17 you can remember the question, answer
18 the question.

19 THE WITNESS: Sorry.

20 A. With respect to, um, the, you
21 know, this is coming from what Mr. Lan
22 informed me is that he -- in reviewing
23 Brevet's Dell OptiPlex, he attempted to
24 evaluate whether certain of -- of the files
25 that Brevet was entitled to -- to preserve

1 MARK CALLAHAN

2 all of them, he tried to -- attempted to
3 identify files that appeared to him to be
4 clearly personal and made an attempt not to
5 preserve those personal files that were --
6 that were on Brevet's Dell OptiPlex and
7 that Brevet had an entitled -- an entitled
8 -- was entitled to be able to preserve them
9 but did not.

10 Q. I want to make sure I got this.

11 So, what -- what was your
12 directive to Mr. Lan: Download everything
13 or download only the business-related
14 materials?

15 MR. SOLOMON: Asked and
16 answered.

17 THE WITNESS: Yes.

18 A. As I sit here right now, it's
19 -- it's my recollection that I had no
20 expectation that there were going to be
21 personal files, certainly, of the magnitude
22 that it sounds like were there. I don't
23 know the directive.

24 My recollection would be to go
25 ahead and execute on the -- on the

1 MARK CALLAHAN

2 preservation of Brevet materials that we're
3 entitled to.

4 Q. Yeah. I just want to make sure
5 that my question's clear.

6 I am not asking what your
7 directive would have been, I am asking what
8 was your direction to Mr. Lan?

9 Did you tell him "Johnny, log
10 into the Dell OptiPlex and download
11 everything" or did you tell him "Johnny,
12 log onto the Dell OptiPlex and download
13 'X' "?

14 And by "X," I am -- I would be
15 asking you to fill in the scope of the
16 directive, if it wasn't everything.

17 MR. SOLOMON: I object to the
18 question.

19 Just answer it.

20 Q. And I apologize if you have
21 answered it already. I -- I can assure you
22 that I have zero interest in hearing the
23 same answer again.

24 So, the -- the only reason I am
25 asking is because I -- I don't under -- I

1 MARK CALLAHAN

2 don't know the answer to that question.

3 So, if you answered it again,
4 you will forgive me for asking it again.
5 It's simply because I didn't hear the
6 answer to that question.

7 A. As I sit here right now, my
8 recollection is that the -- that I -- that
9 I didn't know that there was -- that there
10 were none.

11 There were personal materials
12 on that computer.

13 Q. Okay.

14 A. And so, it -- it would have
15 been a -- you know, my recollection is that
16 it is just a general backup of Brevet's
17 materials. It wasn't a backup Brevet's
18 materials and don't -- don't go after the
19 personal files.

20 I had no expectation that there
21 were going to be personal files and -- and
22 my recollection is that I didn't learn that
23 there may have been personal files until
24 afterwards, when Mr. Lan had informed me of
25 such.

1 MARK CALLAHAN

2 Q. Well, what files did you have
3 an expectation you would be downloading
4 from the Dell OptiPlex?

5 And I ask because I want to
6 make sure that I got this straight but all
7 e-mails that involved Mr. Iacovacci's
8 Brevet e-mail business address, those are
9 e-mails you did not need Mr. Lan to be
10 downloading from the Dell OptiPlex because
11 you already had those backed up in the
12 Global Relay system.

13 Is that right?

14 A. As I sit rear right now, it is
15 my understanding that we -- we had e-mails,
16 to and from, um, Paul's Brevet e-mail
17 address in the Global Relay system.

18 Q. Okay. So -- so, you didn't need
19 Mr. Lan to be downloading those, in order
20 to preserve those e-mails; right?

21 A. As I sit here right now, it's
22 my -- it's my understanding that -- that --
23 that in preserving all Brevet materials,
24 it's my understanding that that would also
25 include Brevet's PSC file, if that is what

1 MARK CALLAHAN

2 you're asking.

3 Q. Well, the Brevet PSC file that
4 you are referencing was just another
5 iteration of the e-mails that had already
6 been preserved on the Global Relay system;
7 right?

8 A. As I sit here right now I -- I
9 don't know what is in a PSC that is not in
10 a, um -- that is not in a Global Relay
11 backup, for example.

12 I don't believe that --

13 THE WITNESS: Excuse me.

14 A. -- calendar appointments or
15 drafts are backed up, in Global Relay.

16 Calendar appointments without
17 -- that hadn't been sent to others and
18 draft e-mails that haven't been sent to
19 others.

20 Global Relay is just tracking
21 the -- the exchange of those e-mails.

22 Q. Did you tell Mr. Lan to go to
23 the non-inbox and non-sent items portions
24 of the e-mail and save those because you
25 didn't already have a backup on the Global

1 MARK CALLAHAN

2 Relay system?

3 A. As I sit here right now, it's
4 my recollection that there was not a
5 detailed conversation about that. If it
6 was -- as I have already disclosed, it was
7 a general discussion of backup Brevet's --
8 preserve Brevet's -- Brevet materials and
9 as we discussed previously; right? That
10 pursuant to our handbook policies and
11 procedures, Brevet is entitled.

12 Q. How long was the discussion
13 that you had with Mr. Ian?

14 Are you talking about a quick
15 conversation, are you talking about more or
16 less than ten minutes long; do you know? Do
17 you remember?

18 A. As I sit here right now, my
19 recollection is that the conversation was
20 less than ten minutes.

21 Q. Was it less than five minutes?

22 To the best of your
23 recollection, as you sit here right now?

24 A. As I sit here right now, I
25 don't know how long the conversation was.

1 MARK CALLAHAN

2 Q. Did you have any discussion
3 directly with Mr. Monticciolo about his
4 view, with respect to this undertaking or
5 were you relying on what Mr. Lan had
6 communicated Mr. Monticciolo told him?

7 A. As I sit here right now, I
8 don't recall if there was a conversation
9 with Mr. Monticciolo on the -- the day of
10 -- the date of the meeting with Mr. Lan but
11 I do recall conversations prior to that,
12 with Mr. Monticciolo, where the topic of --
13 of preserving Brevet materials was a topic.

14 Q. "Preserving Brevet materials"
15 specifically to Mr. Iacovacci and the Dell
16 OptiPlex?

17 A. As I sit here right right now,
18 I have a recollection of conversations with
19 Mr. Monticciolo about preserving Brevet
20 materials on computers that were in
21 employee -- on Brevet's computers, in
22 employees' homes, in general.

23 Q. The conversations that you were
24 recalling with Mr. Monticello didn't have
25 anything to do specifically with

1 MARK CALLAHAN

2 Mr. Iacovacci or the Dell OptiPlex that was
3 in his home; is that right?

4 A. As I sit here right now, my
5 recollection is that the conversations were
6 about all Brevet computers, in employees'
7 homes, including Mr. Iacovacci's.

8 Q. Do you know how far back those
9 conversations went back in time and what
10 prompted you to have those discussions?

11 A. As I sit here right now, I do
12 not recall the timing or the prompt of
13 those conversations.

14 Q. Do you think they were in the
15 weeks leading up to the decision that was
16 made in October of 2016?

17 A. As I sit here right now, I
18 don't recall the timing of those
19 discussions.

20 Q. What was Mr. Monticell's view,
21 as he expressed it to you, with respect to
22 preserving materials on the machines that
23 Brevet had purchased for Brevet employees,
24 to use at home?

25 A. As I sit here right now, my

1 MARK CALLAHAN

2 recollection is that things that Mr.
3 Monticciolo believed that -- that Brevet
4 was entitled to preserve Brevet materials
5 on Brevet computers in employees' homes.

6 And -- and -- and -- my
7 recollection is that he was of the opinion
8 that it was a best practice, um, to do
9 that.

10 Q. And did you share his view?

11 A. As I sit here right now, my --
12 my recollection is that -- that -- I had no
13 reason to disagree with his view.

14 Q. Did you express agreement with
15 his view as you recall or did you just
16 remain silent?

17 A. As I sit here right now, I
18 don't recall the back and forth
19 conversation regarding that.

20 Q. In order to retrieve downloaded
21 materials from these machines, that is
22 machines, like the Dell OptiPlex, that were
23 in employees' homes, you needed to log in
24 or have someone, like Mr. Lan, log in,
25 using credentials that employees were not

1 MARK CALLAHAN

2 required to share with Brevet; is that
3 correct?

4 A. As I sit here right now, I do
5 not believe that that is correct.

6 Q. So, it's your understanding
7 that you could log in and download those
8 materials, without the employee's
9 knowledge, even without using credentials
10 that had not been shared with Brevet?

11 MR. SOLOMON: I object to the
12 question.

13 A. As I sit here right now, my
14 understanding is that your two prior
15 questions are a little bit different.

16 Q. Okay.

17 A. But it -- it -- you implied
18 that the first question, I believe you
19 said, that Brevet -- that employees were
20 not, um, required to provide maybe log-in
21 information or something you said.

22 But it is my understanding that
23 it was required and it was my understanding
24 that -- that Mr. Lan had had, you know, the
25 highest level of -- of rights, with respect

1 MARK CALLAHAN

2 to Brevet's Dell OptiPlex that was in --
3 that was in Mr. Iacovacci's apartment.

4 Q. Is it your understanding that
5 -- that the only reason Mr. Lan was able to
6 get the access that he got, when he logged
7 into Mr. Iacovacci's machine, is that
8 Mr. Iacovacci had previously provided Mr.
9 Lan with log-in credentials to a program
10 known as "log me in," for the purpose of
11 facilitating Mr. Lan's technical assistance
12 with configuring or maintaining his machine
13 periodically?

14 A. No.

15 Q. Sitting here today, are you
16 aware, one way or the other, as to whether
17 or not Mr. Lan used credentials that
18 Mr. Iacovacci had shared with Mr. Lan for
19 the sole purpose of facilitating Mr. Lan's
20 technical assistance, at times prior to
21 October, 2015, that Mr. Lan used his
22 credentials the night that you directed him
23 to log in to the Dell OptiPlex, to download
24 the materials?

25 A. Are you asking me if I know

MARK CALLAHAN

when -- are you asking me what Mr. Lan --

Q. I am asking you whether you were aware -- whether you are aware, sitting here today, that Mr. Lan used log-in credentials that Mr. Iacovacci had provided him for the sole -- that Mr. Iacovacci had previously provided him for the sole purpose of enlisting Mr. Lan's technical assistance, which credentials Mr. Lan still had stored on some document, that he used those credentials the night that you had directed him to log in to the Dell OptiPlex?

A. As I sit here now, I am not aware of -- of any instructions that -- that Mr. Iacovacci gave to Mr. Lan regarding a limitation of -- of what -- of log-in credentials could, or couldn't, be used for and -- and I would say that -- it goes back, again, to -- to the -- to the employee handbook and the -- and the policies and procedures in that.

This was something that -- that was something that Brevet was entitled to

1 MARK CALLAHAN

2 and that all employees had -- had
3 acknowledged and, you know, is contained in
4 there that there's no expectation of -- of
5 privacy.

6 And I think that -- my view is
7 that that extends throughout this.

8 Q. And did you know --

9 MR. CYRULNIK: Withdrawn.

10 Q. Did you direct Mr. Lan to
11 download e-mails from Mr. Iacovacci's
12 personal e-mail system, at Yahoo or a
13 personal e-mail account, the Yahoo account?

14 A. As I sit here right now, my
15 recollection is that I didn't, um, request
16 that that Mr. Iacovacci --

17 THE WITNESS: Not

18 Mr. Iacovacci.

19 Sorry.

20 A. Mr. Lan.

21 Go into, what you say, go into
22 the Yahoo account and download?

23 That is not what I requested,
24 as I think we have gone through. I
25 requested that he preserve Brevet

1 MARK CALLAHAN

2 materials.

3 Q. Did Mr. Lan check with you
4 before downloading any materials concerning
5 Mr. Iacovacci's Yahoo e-mail account?

6 A. As I sit here right now, my
7 recollection is that Mr. Lan updated me as
8 to what he had done but not in realtime.

9 Q. Did he update you that night,
10 in the middle of the night? Did he update
11 you the next day?

12 A. As I sit here right now, I --
13 my recollection is that probably -- I
14 wasn't a night owl, like Johnny, so, I
15 probably got an update, when the sun was
16 up.

17 Q. Okay. Did you express a view,
18 one way or the other, on the propriety of
19 what he had done, with respect to the Yahoo
20 e-mail account?

21 A. And I am not sure -- I am not
22 certain what you're talking about, with
23 respect to "the Yahoo e-mail account."

24 Q. Did -- did -- did he -- did Mr.
25 Lan report to you that he had downloaded

1 MARK CALLAHAN

2 e-mails from Mr. Iacovacci's personal
3 e-mail account, in addition to what he had
4 downloaded from the Brevet e-mail account?

5 MR. SOLOMON: Objection; lacks
6 foundation.

7 A. As I sit here right now, Mr.
8 Lan communicated that he had downloaded
9 Brevet materials and he communicated, as we
10 discussed that he made an effort to avoid
11 any -- any personal documentation.

12 Mr. Lan had not -- I -- I --
13 you know, I believe he communicated that he
14 hadn't had an opportunity to -- to review
15 the tremendous quantity of stolen documents
16 that existed on the -- on the Brevet Dell
17 OptiPlex.

18 Q. How did Mr. Lan know there was
19 a "tremendous quantity of stolen documents
20 on the Dell OptiPlex" if he didn't have an
21 opportunity to review them?

22 A. My understanding, as I sit here
23 right now, based on my recollection, is
24 that Mr. Lan -- in -- in -- in attempting
25 to identify which folders were personal, he

1 MARK CALLAHAN

2 had done reviews, he reviewed some
3 opportunities, which were, clearly, Brevet
4 documents that had been modified in -- in a
5 nature to, potentially, compete with
6 Brevet.

7 Q. Your understanding is that
8 while he was logged in to Mr. Iacovacci's
9 --

10 MR. CYRULNIK: Sorry.

11 Q. While he was logged in to the
12 Dell OptiPlex, Mr. Lan was able to conclude
13 that there was a tremendous number of
14 Brevet documents that Mr. Iacovacci had
15 altered, for potential competing business,
16 before he downloaded those documents to the
17 USB drive?

18 A. As I sit here right now, that
19 is not my understanding.

20 My understanding is that he
21 identified some of those documents.

22 Q. So, you -- he didn't tell you
23 there was "a tremendous amount of
24 documents" that had been stolen from
25 Brevet, did he?

1 MARK CALLAHAN

2 A. At this point -- as I sit here
3 right now, I don't recall specifically what
4 he -- what he communicated.

5 But he did communicate which --
6 um, which folders to focus on in a review
7 and those folders had a tremendous number
8 of Brevet documents in it.

9 Q. How did you know the documents
10 had been altered?

11 A. How did I?

12 Q. How did he?

13 MR. SOLOMON: I object.

14 I object to the statement.

15 There's no foundation.

16 Q. Did you testify that he had
17 viewed the documents and had reported back
18 to you that there were documents that had
19 been altered for a potentially-competing
20 business?

21 A. It's my -- as I sit here right
22 now, it is my recollection that he
23 identified documents that -- in which
24 Brevet logo had been removed.

25 Q. Why would Mr. Lan be looking at

1 MARK CALLAHAN

2 whether the logo was in or not in the
3 document if his -- in directive from you
4 was to preserve all of the documents?

5 MR. SOLOMON: I object.

6 I object to the question.

7 Jason, you're totally
8 misstating what the witness said.

9 I object to this statement.

10 Q. Did I misstate what you said?

11 MR. SOLOMON: "Preserve all of
12 the documents"?

13 Is that your question?

14 MR. CYRULNIK: I am asking the
15 witness whether I misstated what he
16 said.

17 A. I -- I believe so.

18 I -- I -- I, um --

19 Q. What was the misstatement?

20 A. My recollection is that I -- I
21 -- I had previously answered to you that --
22 that Mr. Lan went above and beyond, trying
23 to determine what folders in -- in -- you
24 know, the file system, and this is my
25 understanding as to what he did, were --

1 MARK CALLAHAN

2 contained personal information.

3 In order to do that, my
4 understanding is that he may have had to
5 open certain files in the folders to
6 determine "okay, yeah, this is likely a
7 personal folder, this is not something that
8 would be -- that he was going to preserve"
9 versus another folder, open the file, take
10 a quick look at it and go okay, this is --
11 this -- this looks to him like Brevet
12 materials.

13 Again, this is something he
14 went above and beyond and it wasn't a
15 blanket "preserve everything."

16 It was -- it was quite the
17 opposite.

18 Q. When you just communicated to
19 me -- is that what Mr. Lan told you he did;
20 that he went above and beyond opening
21 files, to determine whether or not they
22 were personal?

23 A. It -- it's -- as I sit here
24 right now, it is my recollection that that
25 is something that Mr. Lan has told me.

1 MARK CALLAHAN

2 I don't recall whether or not
3 he told me the -- the next day or that is
4 something that he has told me in the -- in
5 the process of litigation.

6 Q. I understand.

7 For -- for how --

8 MR. CYRULNIK: Withdrawn.

9 Q. For how long had you been
10 monitoring Mr. Iacovacci's e-mails prior to
11 October 17th of 2016?

12 A. What do you mean by
13 "monitoring"?

14 Q. Well, were you reviewing,
15 without Mr. Iacovacci's knowledge, were you
16 reviewing these e-mail communications
17 through the Global Relay system, or
18 otherwise, prior to October 14th of 2016?

19 A. As I sit here right now, I
20 recall that in May of 2016, I reviewed -- I
21 did a search of Global Relay and, again, as
22 we previously talked about, there is --
23 there is no expectation of privacy.

24 There's no need for any authorization.

25 So -- but I did -- I did a

1 MARK CALLAHAN

2 review of -- of Global Relay and in that
3 review, was -- was, um, was undertaken as a
4 result of actions that Mr. Iacovacci and
5 his counsel or positions that his counsel
6 was taken, assuming it was Mr. Iacovacci,
7 regarding the overall separation agreement.

8 It was -- it was my
9 understanding, in speaking with -- with
10 counsel, that -- that Mr. Iacovacci or Mr.
11 Weiss, I don't know which -- which you want
12 to talk about was -- was -- was taking
13 positions that -- that didn't really make a
14 lot of sense and caused us to have a
15 concern as to what his -- his true
16 intentions were.

17 My recollection was at the
18 time, he was, um -- Mr. Weiss was disputing
19 whether or not Mr., um, Iacovacci was even
20 an employee. It seems that Mr. Iacovacci
21 failed to disclose that to Mr. Weiss.

22 It was -- it was -- it was a
23 time when they were -- Mr. Weiss was trying
24 to remove any reference to Brevet Capital
25 Management to -- from the --

1 MARK CALLAHAN

2 THE WITNESS: Sorry.

3 A. Brevet Holdings, his
4 employment, from the separation agreement,
5 which was, I guess, find interesting, as
6 well, with respect to our earlier
7 conversation, with respect to, you know,
8 whether or not a separation agreement was
9 needed because of the -- of the -- of the
10 terms of the LLC Agreement but it was -- it
11 was -- my understanding from speaking to
12 counsel is that Mr. Weiss was looking for a
13 separation agreement to just have the LLC
14 agreements in it.

15 Q. So, it was based on that and
16 based on the, um, you know, and I don't --
17 I don't remember the timing as to when Mr.
18 Weiss had committed to our counsel and my
19 understanding from counsel is that the --
20 was that there was pushback on -- on the
21 Non-Compete or -- or the -- you know,
22 certain terms, which started to lead --
23 lead counsel to ask whether or not Paul,
24 potentially, could be disingenuous in his
25 potential to -- to, you know, sort of, ride

1 MARK CALLAHAN

2 away in the sunset and, instead, was
3 looking to compete with Brevet.

4 Q. And so, in the ending of 2016,
5 in response to those concerns, you initiate
6 what -- what -- did you, personally, engage
7 in searches of Mr. Iacovacci's e-mails,
8 through the Global Relay SYSTEM, to see if
9 you could identify any supporting evidence
10 for the -- the theory that you just
11 described?

12 MR. SOLOMON: We are now going,
13 I think, a little more than a half an
14 hour.

15 So, I would like to finish up.
16 Just finish this last question.

17 A. It's -- it's my, um,
18 recollection that I did a search and I
19 wasn't looking to support any theory. It
20 was simply just a factfinding search of
21 Global Relay, for which I, then, forwarded
22 on certain of those results to counsel.
23 Um, ultimately -- ultimately sought advice
24 from counsel and -- and at that point in
25 time, the -- the -- the view was that, um,

1 MARK CALLAHAN

2 while he had --

3 MR. SOLOMON: Sorry. I'm
4 sorry, you -- counsel?

5 Just be careful with that.

6 THE WITNESS: Yeah.

7 MR. SOLOMON: I think we are
8 beyond the -- the Court Reporter will
9 confirm this is way beyond a half an
10 hour.

11 MR. CYRULNIK: Just to finish
12 your last answer and I -- I
13 appreciate Mr. Solomon's instruction.

14 Q. Can you tell me what your vow
15 was at that point in time?

16 A. As I sit here right now, my
17 recollection is that it was a massive
18 quantity of -- of Brevet materials,
19 confidential information, proprietary
20 information, frayed secrets, whatever you
21 want to call it, that Paul had, um,
22 nefariously forwarded to personal e-mail --
23 various personal e-mail addresses.

24 Q. When you say "nefariously
25 forwarded," how do you know that the

1 MARK CALLAHAN

2 forwarding was nefarious?

3 A. As I sit here right now, I
4 understand that it was nefarious. I might
5 not have known it was nefarious at the time
6 and I likely did not know it was nefarious
7 in the -- in the timeframe of -- of May,
8 into 2016, as, at that point in time, we
9 didn't have any -- we didn't have a view
10 yet as to whether or not he was doing
11 anything to the detriment of Brevet or
12 Brevet investors.

13 Q. When did you first formulate
14 the view that he was --

15 MR. SOLOMON: Jason? Jason?
16 Jason? This is four questions
17 beyond. I am not a happy -- I -- I --
18 I don't like this. It's
19 inappropriate.

20 We had an understanding. We had
21 an understanding.

22 MR. CYRULNIK: It's a follow up
23 to, um, to -- to Mr. Callahan's last
24 -- last answer.

25 I want to understand what he

1 MARK CALLAHAN

2 did.

3 He said likely not --

4 MR. SOLOMON: This is the last
5 question. This is the last question;
6 okay?

7 We are concluding the
8 deposition at this point.

9 Ask your last question.

10 Q. Mr. Callahan, when did you just
11 formulate the view that you just described?

12 A. Are you asking when did I have
13 -- when did I form the view of what?

14 MR. CYRULNIK: Can the Court
15 Reporter read back the -- the last
16 exchange, so, we can have a very
17 clear question and answer?

18 THE COURT REPORTER: Sure.

19 (Whereupon, the referred to
20 testimony was read back by the
21 Reporter.)

22 A. As I sit here right now, with
23 respect to when we learned of -- what we --
24 what -- I guess what is being characterized
25 as "nefariousness," I -- I don't -- I don't

1 MARK CALLAHAN

2 recall specifically.

3 But I -- I would say it's
4 around -- the beginnings of it? Around
5 October of 2016.

6 MR. SOLOMON: All right.

7 Thank you.

8 MR. SOLOMON: Madam Court
9 Reporter for some reason, I am going
10 to need to ask you for the rough
11 transcript.

12 MR. CYRULNIK: Let -- let me --
13 let me just -- let me just finish.

14 First of all, one -- half a
15 question follow up:

16 Q. How did you formulate that view
17 in the time period that you just described
18 it, around October of 2016?

19 MR. SOLOMON: Listen, this is
20 not appropriate. This is not -- this
21 is not appropriate.

22 This is -- there is no 30(b)(6)
23 addressed to it. We went more than a
24 half an hour, just as an accomodation
25 to you.

1 MARK CALLAHAN

2 We have a witness, who has been
3 sitting here all day and is tired.
4 This is just not appropriate.

5 You said "okay, we will go for
6 another half hour and that would be
7 it."

8 That -- that is to say that we
9 need to talk about the 30(b)(6)
10 because I think he has covered many
11 of them.

12 But I think he has -- he has
13 completed his personal deposition.

14 MR. CYRULNIK: Yeah. Look, I
15 am happy to discuss with you the --
16 the -- the issue that you are talking
17 about.

18 Obviously, we are going to have
19 different views. But I -- I respect
20 yours and I am happy to try to work
21 this out in a way that works for you,
22 for Mr. Callahan and obviously, I
23 have no interest in taking more time
24 than we need. I think -- I don't
25 think we need that much time.

1 MARK CALLAHAN

2 But I -- I -- I think it -- I
3 think we can both agree that with
4 respect to a question that I asked,
5 where he -- where I have a, you know,
6 a clarification to the answer he just
7 gave, it would be a minimal intrusion
8 to ask Mr. Callahan to explain the
9 basis for his last answer.

10 MR. SOLOMON: It -- it was a
11 minimal intrusion four questions ago.

12 I really would like to finish
13 this up. If you can answer this last
14 question, please do. And we can
15 conclude today.

16 Q. Can you clarify: I think you
17 said that you -- you think that you first
18 formulated the view in October of 2016.

19 Can you tell me how you
20 formulated the view that it was nefarious?

21 MR. SOLOMON: Right.

22 And -- and you added some stuff
23 to the question, so, I am going to
24 object to the question.

25 MR. CYRULNIK: I didn't mean --

1 MARK CALLAHAN

2 I didn't mean to. But, okay. I was
3 just trying to streamline the --
4 getting the question in Mr.
5 Callahan's head.

6 A. As I sit here right now, it is
7 my recollection was that it was on -- on
8 advice of counsel.

9 Q. So, you -- you -- you
10 determined, not through any additional
11 reviews of any additional e-mails, you
12 determined, sometime between May of 2016
13 and October of 2016, that Mr. Iacovacci's
14 forwarding of certain e-mails to his
15 personal e-mail address was nefarious,
16 based on the advice of counsel.

17 Is that your answer?

18 A. No.

19 Q. Okay. I'm sorry. I
20 misunderstood.

21 Can you please tell me again
22 what the answer to my question is: How you
23 first formulated the view that you did not
24 think or expect to have been nefarious in
25 May of 2016 was, in fact, nefarious by

1 MARK CALLAHAN

2 October of 2016?

3 MR. SOLOMON: And I object to
4 the form.

5 A. The, um, as I -- as I sit here
6 right now, my recollection is that my
7 understanding, from our counsel, was that
8 the actions of the -- of Mr. Weiss and
9 Mr. Iacovacci and the inability of Mr.
10 Weiss to control Mr. Iacovacci, in -- in
11 combination, with various information
12 provided to counsel, resulted in them
13 providing that -- that advice.

14 Q. Did you say -- Mr. Callahan,
15 did you say: "The inability of Mr. Weiss
16 to control Mr. Iacovacci"?

17 A. Yes.

18 MR. SOLOMON: That is what he
19 said.

20 Q. What do you mean by "control"?

21 A. It's my recollection that Mr.
22 -- from my understanding, from our counsel,
23 was that every time our counsel and Mr.
24 Weiss felt like they were close,
25 Mr. Iacovacci changed his demands.

1 MARK CALLAHAN

2 Q. I see.

3 And it was that -- that --

4 MR. SOLOMON: He has now
5 answered your question and he has
6 answered the second and the third and
7 the fourth. Please move on. Move
8 on.

9 MR. CYRULNIK: I understand.

10 MR. SOLOMON: Great. Okay.
11 Please.

12 MR. CYRULNIK: Okay.

13 MR. SOLOMON: Thank you.

14 MR. CYRULNIK: All right.

15 Let me just state for the
16 record: First of all, I appreciate
17 your time, Mr. Callahan, and I know
18 it has been a long time and I
19 appreciate both your time and, of
20 course -- of course, Lou's.

21 Obviously, we have a lot -- we
22 started to get through because you
23 were designated not only as a
24 30(b)(6) witness on, you know, more
25 than a dozen topics but -- but also

1 MARK CALLAHAN

2 you're an important witness in your
3 personal capacity.

4 So, I -- I think, you know, we
5 endeavor to try to streamline the
6 deposition with the two different
7 parts of this deposition together.

8 And I think we largely
9 succeeded in doing so in the sense
10 that I think I was able to cover, you
11 know, a substantial portion of the
12 30(b)(6) portion of this deposition
13 through discussion through having on
14 some topics I was asking you about,
15 initially, in your personal capacity.

16 But as I indicated earl --
17 previously, I -- I believe there are,
18 you know, likely still, am, a -- a
19 few topics that -- that still war --
20 warrant some -- some questions.

21 So, obviously, my preference
22 would be to finish but my -- I -- I
23 completely respect your -- your time
24 and how lengthy this deposition has
25 been.

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MARK CALLAHAN

I also recognize that if I have the luxury of looking through those topics, you know, sort of, off line, it would likely result in even fewer questions that I need to ask.

And so, I'm -- I'm happy to arrange with Mr. Solomon for a short conclusion to this deposition, once he and I touch base on our schedules and your schedule and once I am able to review, likely tonight, the remaining topics that -- that we weren't able to cover.

So, I am assuming that is okay with you, Lou, that is what I would plan to do and we can touch base on that.

MR. SOLOMON: It is -- it is and -- and I really don't think we are going to find anybody else to cover any of the topics.

On the other hand, if we do, we will let you know.

So, if you could, look at it

1 MARK CALLAHAN

2 tonight. And if you could identify
3 topics that -- I was reading it at
4 the break, it looks like we covered
5 these, many of these.

6 MR. CYRULNIK: Yeah.

7 MR. SOLOMON: We identified the
8 balance and we will see if we can
9 find anybody else. I -- I am not
10 confident of that and then, we will
11 find an appropriate time and an
12 appropriate number of minutes to make
13 sure he is available, if we don't
14 find another witness.

15 I am not sure.

16 MR. CYRULNIK: Sounds good.

17 And, Mr. Callahan, I think is
18 suffering from the need to -- from
19 withdrawal from -- from sitting in
20 the deposition chair.

21 I am happy to get him back up
22 there, even if there is another
23 candidate for the 30(b)(6) piece.

24 So, thanks you for your time.

25 I will be in touch with you,

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MARK CALLAHAN

Lou.

And for now, we will hold the deposition open, on those grounds.

MR. SOLOMON: Okay.

THE VIDEOGRAPHER: This concludes today's testimony, given by Mark Callahan, as stipulated by all parties.

The total number of Media Units used was seven and we will be retained by Veritext Legal Solutions.

We are off the record at 6:35.

Thank you.

THE COURT REPORTER: Mr. Solomon, would you like a copy of the transcript?

MR. SOLOMON: Yes, please.

(Whereupon, at 6:36 p.m., the Examination of this witness was concluded.)

° ° ° °

MARK CALLAHAN

D E C L A R A T I O N

I hereby certify that having been
first duly sworn to testify to the truth, I
gave the above testimony.

I FURTHER CERTIFY that the foregoing
transcript is a true and correct transcript
of the testimony given by me at the time
and place specified hereinbefore.

MARK CALLAHAN

Subscribed and sworn to before me
this _____ day of _____ 20____.

NOTARY PUBLIC

MARK CALLAHAN

E X H I B I T S

PLAINTIFF'S EXHIBITS

EXHIBIT	EXHIBIT	PAGE
NUMBER	DESCRIPTION	
Exhibit 1	30(b)(6) Notice of Deposition	56
Exhibit 5	Partners, LLC Agreement	129
Exhibit 6	Calender entry for January 6, 2016	145
Exhibit 7	E-Mail chain following up on retiring	167
Exhibit 8	2/9/2016 Meeting between Mark and Doug	202
Exhibit 9	E-Mail dated 2/12/2016	237

(Exhibits attached.)

MARK CALLAHAN

I N D E X

EXAMINATION BY	PAGE
MR. CYRULNIK	6

INFORMATION AND/OR DOCUMENTS REQUESTED	
INFORMATION AND/OR DOCUMENTS	PAGE
(None)	

QUESTIONS MARKED FOR RULINGS

PAGE	LINE	QUESTION
(None)		

DATE OF DEPOSITION: 10/5/2021
WITNESSES' NAME: Mark Callahan

[illegible]

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____, 20__.

MY COMMISSION EXPIRES:

[& - 2:21]

Page 1

&	13 60:22 274:24	2008 38:24	263:20 264:4,7,16
& 3:17	14 60:4,19,22,23 62:8,14 229:13	2009 129:2	266:2 269:15,19
0	145 430:12	2010 40:2 231:23 232:2	269:23 270:19
00008 204:17	14th 412:18	2011 208:5,12	271:17 272:5
08048 1:6 4:22 433:2	15 229:14	2012 40:3 186:5	273:7 276:5
1	15222 2:11	2014 229:21	279:15,22 281:14
1 3:17 4:14,15 56:18,19,23 57:5 75:14 167:13,17 271:17 272:5 273:7 276:5 279:15,22 281:14 281:20 300:16 302:23 304:2,14 430:8	16 158:15,18,19 229:18 230:23 343:21	2015 125:18,21,24 126:9 206:6 229:3 229:7,18 230:16 230:19,23 250:14 342:18 343:21 403:21	281:21 283:7
10 16:20 33:20 39:25 48:21,25 60:22 100:8,15 210:25 211:4,14 274:20 275:4	167 430:14	2015/2016 342:19	286:7 287:8,9
10/5/2021 433:3	17th 412:11	2016 120:7,9,21 121:5,16,18 122:7 122:19 123:8,13 124:8 125:18 126:9 137:16 138:23 139:8 140:3,15 145:6 146:4 155:21 156:25 162:13 165:8 168:6,18 173:10 174:17 176:16,20,22 180:13 181:25 182:7 187:24 191:7,10,15,20,22 192:6,18,19 193:14 196:3 197:12 198:2 199:22 200:9 201:2,11 203:16 203:24 205:16 206:3,5 213:2,25 214:13 217:14 226:11 229:3 236:2 237:11 238:18 251:15,19 252:2 253:10,18	288:25 290:5
100 105:20	18 275:2 433:2		298:22 299:18
10006 2:6	180 132:9,20 134:11		300:16,21 301:8
10:27 75:12	18034 432:22		301:21 302:14,22
10:38 75:18	1995 67:13		302:23 304:2,14
11 60:22 313:22 314:2	19th 432:20		304:14 310:10,18
11:52 138:11	1:01 188:24		310:19 311:13
11th 203:24	1:18 1:6 4:22		312:2,15 320:2
12 60:22 315:19 316:11	1:41 189:7		325:10,12 326:12
129 430:10	1:43 190:10		342:18 344:21
12:02 138:16	1:47 190:14		348:24 376:15,24
12:24 238:18	1st 122:19 290:5,8 305:12		379:20 400:16
12th 168:6 169:9 170:16 176:19 182:11 184:13,25 185:5 237:11 238:17 241:19	2		412:11,18,20
	2 59:16 75:20 138:12 167:24 287:16,21 288:14 303:16,19 304:19 304:20 305:6 313:16		415:4 417:8 419:5
	2/12/2016 237:5 430:17		419:18 421:18
	2/9/16 203:10		422:12,13,25
	2/9/2016 202:25 430:15		423:2 430:12
	20 193:14 429:19 433:22		2017 333:23 334:24
	2005 38:24		202 430:16
			2021 1:11 4:5 432:20
			20th 176:22 177:6 177:8 182:11 217:19
			21st 129:2
			225 2:10
			237 430:17
			26 60:19,25 62:8 62:14 71:8
			2:17 217:6
			2:21 217:10

[2:59 - account]

Page 2

2:59 170:17	56 430:9	8	absurd 211:16
3	5:36 386:11	8 58:22 59:3,7,11	308:21
3 138:17 167:24	5:48 386:18	60:22 202:24	abtime 76:24
189:2 304:21	6	203:3,20 237:8	abundance 44:11
305:8 313:17,19	6 1:17 15:14 18:2	430:15	abundane 44:14
30 1:17 3:16 15:13	18:4,5 56:8,22	8:30 146:4	acceding 213:12
18:2,4,5 56:8,22	57:25 58:14,20,21	9	accept 249:2
57:25 58:14,20	59:10,23 60:18,21	9 60:22 131:14	acceptance 247:18
61:15 63:9 85:4	60:22 61:15 62:8	237:6,9,23,24	248:7
387:19,20 388:4,6	62:14 63:9 85:4	247:21 430:17	accepted 247:15
389:6,19 390:8	145:4,6,7,13,15	99 63:25	access 35:16,18,23
419:22 420:9	322:3 386:13	9:00 1:12	36:2 265:17
424:24 425:12	387:19,20 388:4,6	9:08 4:4	269:14,17,21,25
427:23 430:8	389:6,19 390:8	9th 203:16 276:14	270:3,5,6,18,22
31 61:2 62:14	419:22 420:9	a	307:8,13,14 311:9
32 62:9	424:24 425:12	a.m. 1:12 146:4	323:20 337:12,16
33 62:9	427:23 430:8,11	aaron 21:22,23	341:7,10 342:13
34 61:4 62:15	430:12 431:5	22:3,9,12,17	342:17,20 343:2,5
316:18	60 211:25	aaron's 21:24	343:13 346:4,6
38 60:19 61:4 62:9	63 59:16	abilities 359:5	352:14,14 354:14
62:15	6:35 428:13	ability 88:7 140:21	354:23 355:21
3:18 271:6	6:36 428:19	162:16 366:15,19	365:5,9,11,15,19
3:25 271:11	6th 146:4 147:7	366:21,23 373:3	365:21,22,25
3rd 2:5	163:5 184:12,18	373:17	366:4,6,9,14 368:9
4	7	able 7:15,16,18	368:18 375:5
4 189:9 271:7	7 60:4,21 131:16	57:4 123:2 148:22	403:6
4:16 321:18	167:6,10 185:2,13	148:22 153:4	accessed 354:10
4:25 321:25	386:20 430:13	156:15,22 162:11	374:5 376:18
5	7.1 131:12 144:24	164:6,7 165:18,21	378:12
5 1:11 4:5 129:9	7.1. 131:17	165:25 167:3	accesses 355:18
129:21,25 130:5	7.1a 131:24 132:2	171:6 343:12	accessible 355:23
168:6 271:13	132:12,15 133:5	346:4 371:12	375:2
321:20 430:10	134:9 143:15	373:12 393:8	accessing 355:2
5,000 201:25	7.1a. 136:21	403:5 408:12	375:9 378:20
50 202:2,13 211:7	70 59:16	425:10 426:11,14	accommodate
211:10,15,18,23	72 59:16	absence 324:21	162:8 218:12
211:25 212:2,9,16	7:00 389:9	absent 115:7,8	accomodation
307:14		absolutely 60:13	419:24
55 2:5		350:8	account 14:10
			22:16,19 370:10
			405:13,13,22

406:5,20,23 407:3 407:4 accounting 255:14 accounts 354:9,10 354:24 accuracy 239:3,7 accurate 231:16 265:4,9 273:24 276:18 285:19,25 288:23 290:3,12 292:23 293:5 307:17 308:4,11 308:13,17,20 309:22,23 310:6 318:8,12 accurately 273:17 276:11 286:21 accuse 300:4 accusing 300:18 acknowledge 351:6 acknowledged 381:3,4 405:3 acquired 67:16,17 acting 93:22 95:21 97:15,18 158:11 action 5:7 6:22 19:12 253:25 432:16 actions 248:3 413:4 423:8 active 9:17,19 activities 158:2,4,6 338:15 370:8 activity 346:8 385:10 acts 96:7 214:23 actual 21:14 85:16 254:8 291:3 293:16	add 155:24 156:9 166:19 added 313:21 421:22 addition 13:19 223:11 255:15 331:21 407:3 additional 342:9 422:10,11 address 179:25 217:3,24 233:13 233:15 254:22 255:2 279:17,21 367:16 372:22 373:11,22 396:8 396:17 422:15 addressed 387:21 419:23 addresses 275:11 366:17 368:4 372:17,25 416:23 addressing 292:4 adina 2:19 administer 3:11 adobe 342:5 adopted 40:7 adoption 39:16 advance 105:23 361:24 advances 106:9 advantage 160:19 advent 327:23 advice 16:8,16 52:7,10 220:7,15 222:10,14 223:15 257:19 297:6 298:17 302:6 415:23 422:8,16 423:13 advise 173:15 251:17	advised 84:12 258:6 advisement 210:7 358:3 advising 257:15 advisor 31:23 39:12,19,23 40:11 41:5 43:21 45:9 45:13,13 46:3,6,15 77:17 78:12,22 85:10 357:11 advisors 26:23 affidavits 28:3 51:14,21 affiliate 69:18 72:20 74:18 116:15 affiliated 95:18,19 97:18 115:24 116:5 affiliates 65:6,12 affiliations 5:10 affirmative 380:22 age 275:11 ago 21:12 33:20 40:2,7 54:24 69:18 71:8 80:9 83:10 98:6 106:23 130:21 131:7 142:7 144:16 193:20 219:12 223:6 225:8 235:10,20,23 236:9 237:2 238:8 242:25 257:4 263:17 328:10 362:3 382:13 421:11 agree 4:12 19:7 120:6 122:4,9,18 133:12 137:10	140:14 146:25 168:14,23 169:19 170:5 171:24 180:17 182:6,25 183:14 203:21 219:13 229:14 245:6,19 262:15 263:5,10 292:22 293:15 307:9 308:6,11 362:25 380:16 390:18 421:3 agreed 3:5,20 159:8 363:18 agreeing 161:6 agreement 14:22 79:25 80:4 82:5 83:19 114:19 115:2,6,7,15,16,23 116:6,14 127:8,14 127:18,20,25 128:9,14,16,18 129:3,10,21 130:6 130:16,24 131:7 133:2,6,8,10,14 134:2,16,21 135:9 135:14,16,19,21 136:2,19 143:16 144:6,23 175:7,12 176:5 178:19 179:18,22,24 181:16,25 182:5 183:3,16 188:7,10 188:18 199:19,24 201:25 203:17 207:20,22 208:16 208:19,24 209:3,4 209:10,25 210:11 210:20 211:12 213:8 217:15,23 218:5,10 219:18
--	--	--	--

221:19 222:2 223:9,23 224:3,9 224:12,20 225:3 225:12 226:4 227:3,21 240:13 253:23 254:21 255:5,13 256:14 266:18 281:23 282:11,13,19 385:25 401:14 413:7 414:4,8,10 414:13 430:10 agreements 92:17 114:15 115:19 128:12,22 133:19 200:23 201:16 203:25 205:12,16 210:13 213:4 214:19 215:10 217:24 218:11 220:16 222:11 226:5,12,22 227:4 227:11 253:24 254:25 256:9 258:4 414:14 ahead 10:17 48:12 103:17 130:11 391:8 393:25 al 1:8,17 2:10 4:19 alleged 59:15 allow 143:12 150:18 151:4 361:20 372:15 allowed 15:24 16:3,17 331:2 allowing 154:11 156:12 214:17 215:7 allows 327:15 altered 408:15 409:10,19	alternate 7:17 ambiguity 297:11 amended 59:17 amount 38:24 41:16 101:14,15 101:20,24 102:2,4 102:4,7,8,11,15,20 103:2,21 104:4,15 104:22 105:2,6,10 105:11,14,18,19 152:21,21,22 161:12 408:23 amounts 210:12 amusement 158:7 analysis 200:6,21 201:2,8,10 202:16 annotated 61:11 announced 264:23 303:4 announcement 263:20,24 264:3,6 264:10,14,20 266:7 267:4,8,19 announcements 267:24 answer 10:14,17 10:20 11:20 13:7 15:4 16:8,10,14,24 21:16,21 38:19 42:25 80:20 103:16,20 121:16 121:20 133:11,22 134:8,22 141:18 154:17 156:10,15 164:14,20,21 166:20 174:3,8,14 179:3 183:9 190:25 191:22 192:13,16 201:19 219:8 240:14 242:18 246:24	265:4,10 267:21 299:5 308:3 329:3 339:25 340:12 353:4 362:2 363:4 391:9 392:17 394:19,23 395:2,6 416:12 417:24 418:17 421:6,9,13 422:17,22 answered 17:8 27:8 134:6 174:9 187:21 236:20 246:14,23 295:25 307:23 309:11 353:4 362:11 363:3,17 364:16 393:16 394:21 395:3 410:21 424:5,6 answering 156:17 284:6 362:22 answers 191:12 195:12 201:3 242:25 362:24 anticipate 316:15 anticipated 182:19 anxious 17:2 anybody 20:22 24:5 161:4 194:2 201:9,10 213:10 213:21 215:4 222:19 235:18 267:9,12,12 270:16 290:22 292:2 305:20,21 306:16 309:5 320:15 365:23 366:11 426:21 427:9 anyway 311:23	aol 354:9 apart 27:24 28:11 30:23 38:16 48:4 50:2 51:21 52:12 53:5 90:16 91:13 118:21 135:20 139:5 144:9 152:6 234:22 270:15 321:3 324:14 329:11 333:13,18 350:21 351:18 365:24 372:12,24 apartment 403:3 apologies 164:19 apologize 361:24 394:20 appear 286:6 287:10 310:17 appearance 5:14 appearances 5:10 5:22 appeared 157:20 357:22 393:3 appears 276:17 317:18 356:16,24 application 342:15 appointment 203:16 appointments 397:14,16 appreciate 37:12 82:8 84:21 120:22 137:22 164:10,23 202:21 224:2 273:3 351:3 364:5 389:11 416:13 424:16,19 appreciated 159:21 appreciating 178:24
---	---	--	---

appreciative 159:13,17	280:16 298:7 307:23 309:10	397:2 403:25 404:2,3 410:14	attend 52:11,18,22
approach 91:23 361:3,5,9	320:10 345:19 351:4,5 362:3,10	418:12 425:14	attended 49:10 52:15,25 54:17,17 54:22
approached 74:7 89:24 383:11	363:3,16 364:6,15 380:9 384:10	asks 171:3	attending 146:9
approaches 94:9	393:15 421:4	aspect 91:25	attention 57:17 131:11 162:12
appropriate 84:5 95:14 256:15 419:20,21 420:4 427:11,12	asking 14:6 16:18 24:4 26:5 29:16 65:4 80:22 84:25 85:5,6 87:20 91:7 95:25 96:16 98:10 102:21,23 103:14 104:3 111:5 116:10,11 117:25 122:13 126:3,5,12 133:20,21,22 137:4,5 140:10,11 153:3 156:6 164:11 166:10 177:23 179:5 181:14,23 182:22 185:10 190:5 195:20,23 200:14 200:25 219:4 220:3 227:25 229:19 233:7,8,13 236:10,12 238:8 245:18 246:20,21 247:23 248:6 254:17 255:23,25 273:4 275:10 280:3,7,9 288:4,6 294:7 297:22 303:22 308:10 312:9,10 313:13 339:24 340:5 343:23,25 348:2 363:5,6 372:10 382:23 394:6,7,15 394:25 395:4	aspects 81:5 82:21 218:7	attorney 5:15 50:23,25 174:25 218:18
approvals 95:14 307:4		asset 73:20 74:3 111:2 112:11	attorneys 2:4,9 6:3 21:11 24:18 26:8 27:4 28:8 29:6,10 35:17 257:20,24
approve 296:13		assets 81:5 82:4 83:21 85:16,18,20 87:8,9,10,14,15,17 87:24 88:5 105:22 106:2,4 112:2,4,16 112:19 231:3	audio 4:10 387:7
approximate 275:11		assistance 403:11 403:20 404:10	auspices 240:9
approximately 7:22 48:4 331:20 390:9		associated 43:22 82:3,7 85:19,20 98:24 129:13 186:18 378:19	authority 94:3 383:18 384:4,5,9
april 182:7 271:17 272:5 273:7 276:5 279:15,21 281:13 281:20 299:17 300:15,21		assume 10:12 165:24 227:24 273:4 333:3	authorization 368:5,6 412:24
archeveche 211:16		assumes 336:6	authorize 382:14
area 148:15 290:24		assuming 413:6 426:15	authorized 3:11
arrange 426:8		assumption 54:2 175:15	authorizing 270:16
aside 13:17 18:10 353:17		assure 103:11 394:21	availability 161:12 163:2
asked 11:17 16:14 17:13 73:25 80:7 81:25 96:12 103:19 111:23 128:5 135:4,7 156:10 162:22 165:12 172:4,13 174:15 182:4 195:24 199:2 223:16 236:19 259:2,9 272:13		athletic 158:6	available 43:6 152:15 359:13 427:13
		attached 136:18 315:11 430:19	avenue 2:10
		attachment 315:22	avoid 242:13,21 379:7 381:8 407:10
		attempt 393:4	aware 11:22 14:9 14:14,17,19 17:22 18:7,9 22:14,17 50:7 76:19 78:8 78:11,21 96:6 108:23 114:25 115:6 116:4,12
		attempted 392:9 392:23 393:2	
		attempting 407:24	

[aware - believe]

Page 6

152:7 181:6 197:22 200:20 201:8,9 205:15 226:23 267:24 270:16,21 285:5 333:16 338:25 383:5 403:16 404:4,4,16	backed 41:12 73:20 74:3,4 396:11 397:15 background 12:3 275:13 backup 38:6,10,11 41:3 43:16 44:22 359:21 361:3 380:7 395:16,17 397:11,25 398:7 backups 38:15,17 41:10 43:15 348:13 349:10 bait 287:5 balance 427:8 balcony 53:25 bank 67:15,15 70:7,9 banking 68:15,16 base 426:10,17 based 49:12 53:23 89:4 95:23 96:18 106:3,10 108:19 133:4 141:19 169:16 178:5 220:3 254:10 256:4 261:2 272:18 283:13 297:19 300:7,13 301:10 317:17 329:22 340:13 407:23 414:15,16 422:16 baseless 371:4 basic 120:3 255:7 basis 85:15 108:5 125:9,12 175:14 218:8,15 219:16 250:24 251:23 253:4,6 278:11 292:21 300:4	308:22 346:23 350:19 351:17,21 351:23,24,25 421:9 bazeree 76:25 beach 53:25 bearing 202:11 becoming 40:10 41:4,4 beginning 5:14 69:6 75:19 122:7 126:9 138:17 155:9 189:8 271:12 322:2 386:19 beginnings 419:4 behal 2:20 behalf 59:20 60:6 81:7 93:22 95:20 96:8 97:16,19 113:9 276:2 belief 250:25 251:22,24 252:16 252:19,20 253:3 351:7 believe 8:14 9:18 9:22 14:21 17:25 18:16 19:22 20:16 22:11 23:4,16 24:4,10 25:7 26:12 29:9 31:8 34:22 40:7,15,15 40:16 41:10 45:25 46:12,16 47:6 49:22 50:9,11,13 50:17,19,24 51:22 52:9,15 53:14 54:22,23 58:19 60:25 63:24 64:22 65:13,14,20 66:9 67:8,12,13,22 70:3	70:6 73:20 76:7 76:17,22 77:6 78:24 79:2 81:11 81:11,24 85:13 93:24 107:6,16 109:19 116:25 117:13,19 118:13 124:25 125:7,21 134:23 135:8 152:13,22 153:22 156:15 157:5 158:8 163:11 169:2 173:17 176:19 180:16 181:21 188:3,12 188:14,15 193:19 194:7 195:2,4 202:11 206:5,20 207:18 208:18 211:22 216:2,3,4,7 218:15 223:2 225:19 226:10 227:14 229:3,11 229:12,13 232:15 233:17 239:6 242:7 246:14 249:11 250:22 251:3,5,15,16 252:5,10 258:18 266:8 269:4,8,12 269:17 270:6,8 273:22 278:8 280:9,13 284:17 284:18 285:22 290:21 291:7 293:3 295:11,25 300:9,10,15 301:17 303:24 304:23 305:10 308:12 314:11 317:23 318:11
b			
b 1:17 15:14 18:2 18:4,5 56:8,22 57:25 58:14,20 61:15 63:9 85:4 387:19,20 388:4,6 389:6,19 390:8 419:22 420:9 424:24 425:12 427:23 430:2,8 back 13:7 33:17 34:17 38:24 41:9 41:13 48:24 51:24 60:11 75:22 84:18 86:14 101:8 123:25 130:3 138:7,19 141:24 154:22,25 155:6,8 155:12 157:17 164:17 189:11 200:12 223:4,19 240:25 252:17,18 259:5,9 284:8 286:10 300:2 318:19 320:8 325:9,12 333:24 342:18 348:8 367:11 379:17 391:11 400:8,9 401:18 404:21 409:17 418:15,20 427:21			

320:9,20 321:10 321:10 323:15 325:5 327:8 328:6 328:8 330:24 331:16 338:18 344:12 347:25 351:21 352:16,18 353:6,7 354:25 355:9,10,12,14,16 356:2,4,7 357:2,5 358:12,13 361:25 362:23 363:3 365:15 366:5,14 368:2 370:16 374:20 378:4 381:6 385:23 391:21 397:12 402:5,18 407:13 410:17 425:17 believed 401:3 bell 39:2,4 177:6,8 268:17 benefit 267:20 286:3 benefits 154:4,4 155:20 158:22 159:5,9,17,24 160:10 162:10 240:10 244:16 245:8,21 246:2,5 246:11,17 247:3 247:15,18 248:7 248:10 249:3,4 250:3 273:16 best 30:11,12 39:20,21,24 40:3 161:21 162:8 171:13 176:11 200:4 251:12 257:6 273:22 286:13 287:12	296:4 350:2 359:5 390:5 398:22 401:8 better 130:4 214:15 215:5 229:14 272:13 297:5 359:21 360:10 beyond 241:24 244:16 245:8 246:2,17 247:16 247:19 248:4 249:3,5 250:3 251:11 341:13 375:20 381:8 410:22 411:14,20 416:8,9 417:17 big 231:9 246:13 bigger 230:21,22 bills 23:21,24 bit 34:6 36:14 57:24 67:11 148:24 202:20 387:13 402:15 blank 14:16 blanket 411:15 blanking 21:24 bleeding 163:15 163:17,19,22 blood 432:16 bob 52:16 booked 54:6 borrow 89:21 92:23 borrower 8:24 9:3 9:5 88:13,20,23 89:10,20 90:7,15 90:22 91:4,12,19 92:5 93:8,17 94:9 94:10,11 102:5,6	borrowers 89:3 284:14 boss 68:12 243:15 bosses 68:11 71:24 72:8 bother 192:11 376:16 378:17 bottom 167:23 235:16 275:9 313:21 316:16 bound 113:22 box 34:4 breached 213:3 break 11:10,13,15 11:20 74:25 75:8 75:24 120:12 138:21 368:14 371:19 372:10 386:6,7 389:22 427:4 breakdown 83:3 83:13 85:7 breaks 75:5 271:2 brevet 1:8,16 2:10 2:18,18 4:18 8:6 8:12,25 14:20,21 19:23 20:2 21:10 22:21 23:7,12,20 26:20 27:2,11 31:21,22 35:5 36:16,20 37:19 38:8,21,22 39:17 39:22 40:7,9,25 41:3 42:13 43:22 43:22 44:9,21 45:11,19 46:7 55:14,16,18,20,21 55:24,25 56:4 63:21,24 64:10,20 64:23,25,25 65:7 66:12,24 69:18,21	72:20 73:2,14 74:18 75:25 76:2 76:4,6,7,11,20,21 77:4,7,9,11 78:9 78:11,21 79:2 80:6,13,16,17,23 80:25 81:2,3,6,8 81:13,15,16 82:2 82:14,16,23 83:14 83:22 84:10,16 85:10,11,22,22 86:5 89:6,12,24 90:7 91:18 92:9 92:18,21 93:20,25 94:2,12 95:17,20 96:8 97:19 100:20 102:16 103:3,6,23 104:12,18,24 105:6 106:2 107:24 108:9,15 109:3,18,25 110:6 110:10,11,18,24 111:8,10,11,15 112:17,20 113:6 113:12 114:20,20 115:4,8,16,24 116:5,7,13,15,20 116:22,25 117:9 117:11,15,16,22 118:25 119:2,9,13 123:12,19 124:11 124:15,16 125:2 126:23,24 130:7 135:24 136:8 138:23 139:16 140:5,17 141:2,2 141:10 142:18 143:21,22 144:2,3 144:5,10 147:14 148:17 149:16 150:19,23 151:2,3
---	---	---	--

[brevet - business]

Page 8

151:13,21,21,25	276:2,5,19 278:14	357:24,25 358:22	395:16,17 396:25
152:2,2,8 153:2,3	278:16 279:5,10	358:25 359:2,4	398:7,8 399:21
154:2,7,10,12	282:16,22 283:23	360:9 361:20,21	403:2
155:17,18 156:12	284:12 285:18,23	362:6,8 363:11,14	brian 284:18
156:25 157:3,6,12	286:19 288:9	364:3,3,4,12	bring 12:23 330:5
157:20,22 158:12	289:7 290:9,16,22	365:10,13 366:10	331:2 345:19,19
158:21,25 159:7	290:25 291:10	366:16,24 367:15	brings 104:11
159:14,20 160:7,9	293:17,21 294:12	367:20 368:20	389:8
160:15,17 161:4	294:16,19,23	371:7 372:16,17	broached 253:14
162:7,15 164:2	296:11,20,22	372:21,25 373:4	broad 44:5 79:16
165:5,10 166:5,15	297:13 298:21	373:11,15,21,23	broaden 179:5
172:24 176:2	301:6,20 304:6,13	373:24 374:3,6,15	broadway 2:5
178:13 179:10,20	305:15 306:7,23	376:22 378:3	brothers 67:21
180:2,6,13,20,21	307:12,13 308:20	379:10,11 380:4,7	68:2,4,6,8,10 69:5
181:5,19 182:4,18	309:23 314:12	384:4 391:25	69:10,12 70:10,12
182:19,22 183:5	322:6,8,12,17,20	392:4,25 393:7	70:16,24 71:11
183:15,16,18	323:7 325:6,15,18	394:2 396:8,16,23	brought 14:2
186:7 187:10	325:20,20,22	397:3 398:8,11	15:12 165:16,17
189:15 193:7	326:3,7,11,19	399:13,14,19	166:25 167:2,3
199:14,21 200:8	327:19 328:13	400:6,23,23 401:3	330:9
200:24 202:4,7	330:16,18 331:18	401:4,5 402:2,10	browser 337:13,22
204:3 205:22,22	331:20,23 332:18	402:19 404:25	342:21 343:2
206:25 208:15,20	332:21,21 333:18	405:25 407:4,9,16	354:11,15,24
208:21 210:17,20	335:5,8 336:14,17	408:3,6,14,25	355:19 374:5
213:2,13 214:14	336:21 337:14,17	409:8,24 411:11	375:3,9 378:20
214:15 215:4	338:15,22 339:2	413:24 414:3	browsers 376:13
220:19 222:16,20	339:15,18,18,22	415:3 416:18	bruncan 66:9
226:13,23 227:12	340:16 342:7	417:11,12 433:2	buck 380:11
227:15 228:9,23	343:16 344:8,16	brevet's 28:24	bullet 239:10,17
229:6 233:2 235:6	345:6,13,14	29:2 38:2,12,17	239:25 241:4
239:20 242:14	346:15,17,23	85:5 90:20 91:16	244:6 245:25
244:15 245:8,21	347:8,9,11,15,21	104:5 157:23	246:7 254:14
245:22 246:10	348:4,11 349:5,6	158:12 183:4	261:3,3,16
247:2 248:10	349:12,15 350:11	286:6 307:16	bullets 262:5
249:6 251:19	350:12,18,23,24	322:9 336:4,8	bunch 93:19
252:2 253:9,17	351:2,8,11 352:13	337:20 350:4,7	burdensome
255:5,17 256:10	353:14,19,20,24	352:2 353:15	360:22
258:20 259:15	354:12,16,22	356:5 361:14,18	business 73:13,22
264:4 267:9,13,16	355:2,4,8,10,10,23	365:5 379:5,9	73:24 338:15
268:2,9 271:16	356:10,11,15,22	380:23,25 381:11	347:19,22,23
274:8,10 275:12	356:24 357:3,4,22	392:6,7,23 393:6	349:20 357:24

[business - callahan]

Page 9

358:9,25 360:9 393:13 396:8 408:15 409:20 businesses 67:4 96:3	48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1,3 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1,22 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1,2 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1,6,10,13 94:20 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 129:5 130:1,5,15 131:1 132:1 133:1 134:1 135:1 136:1 136:24 137:1 138:1,8,19 139:1 140:1,2 141:1 142:1 143:1 144:1 145:1,18 146:1 147:1 148:1 149:1 150:1,16 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1	161:1 162:1 163:1 164:1 165:1,7 166:1 167:1 168:1 168:14 169:1,7,20 170:1 171:1,17 172:1 173:1,5 174:1 175:1 176:1 177:1 178:1 179:1 179:6 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1,11 190:1,18 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1,13 202:1 203:1,22 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1,12 218:1 219:1,22 220:1 221:1 222:1 223:1 224:1,17 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1,22 242:1,18 243:1 244:1 245:1 246:1 247:1 248:1 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1 258:1,8 259:1 260:1 261:1 262:1 263:1 264:1 265:1 266:1 267:1,7	268:1 269:1 270:1 271:1,15 272:1 273:1 274:1 275:1 275:7 276:1 277:1 278:1 279:1 280:1 281:1 282:1 283:1 284:1 285:1,20 286:1 287:1 288:1 288:2 289:1 290:1 291:1 292:1 293:1 294:1,4 295:1,14 296:1 297:1 298:1 298:19 299:1 300:1,3 301:1,5 302:1 303:1 304:1 305:1 306:1 307:1 307:9 308:1,22 309:1 310:1 311:1 312:1 313:1 314:1 315:1 316:1,16 317:1 318:1 319:1 320:1 321:1 322:1 322:5 323:1 324:1 325:1 326:1 327:1 328:1 329:1 330:1 331:1 332:1 333:1 334:1 335:1 336:1 337:1 338:1 339:1 340:1 341:1 342:1 343:1 344:1 345:1 346:1 347:1 348:1 349:1,8 350:1 351:1 352:1 353:1 354:1 355:1 356:1 357:1 358:1 359:1 360:1 361:1 362:1 363:1 364:1 365:1 366:1 367:1 368:1 369:1 370:1 371:1 372:1 373:1,3 374:1 375:1 376:1
c			
c 2:2 6:12 274:16 429:2 432:2,2 cadence 388:18 cake 240:5 calculated 106:10 calendar 48:25 145:25 203:15 397:14,16 calender 145:5 430:11 call 22:6 40:18 49:8,8 83:10 88:12 95:2,11 106:8 107:18 160:14 179:11 224:20 225:21 247:20 255:8,11 257:18,21 258:23 261:2 262:7 287:9 416:21 callahan 1:17 6:1 6:20 7:1,20 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1,5 17:1,15,19 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1			

[callahan - characterized]

Page 10

377:1,24 378:1 379:1,18 380:1,11 381:1 382:1 383:1 384:1 385:1 386:1 387:1 388:1 389:1 390:1,5 391:1,16 392:1 393:1 394:1 395:1 396:1 397:1 398:1 399:1 400:1 401:1 402:1 403:1 404:1 405:1 406:1 407:1 408:1 409:1 410:1 411:1 412:1 413:1 414:1 415:1 416:1 417:1 418:1 418:10 419:1 420:1,22 421:1,8 422:1 423:1,14 424:1,17 425:1 426:1 427:1,17 428:1,8 429:1,15 430:1 431:1 432:1 433:3,21 callahan's 256:2 417:23 422:5 called 6:4,12 28:17 28:22 64:25 65:15 100:23 101:2 109:19 279:6,9 341:22 calling 278:21,22 calls 27:6,23,25 48:15 49:16,20 50:11,15 80:2 101:13 184:19 250:17 327:15 candidate 427:23 candidly 25:24 cap 37:8 capability 366:9	capacity 19:18,20 23:14 42:4 56:6,7 56:8 125:19 141:12 166:4 388:7 425:3,15 capital 31:21 39:18,22 40:9 43:23 44:21 65:15 66:16 77:9,11 78:9,11,21 79:2 80:6,13,16,25 81:3 81:6,9,15,16 82:2 82:14,16,23 83:14 83:22 84:10,17 85:10,22 86:5 110:7 111:11 130:7 234:3,5 372:21 413:24 captured 37:9 262:24 263:3 captures 37:3 372:20 capturing 218:7 care 201:13 228:18 careful 381:25 416:5 carefully 379:7 caring 228:14 carrying 79:18 case 1:6 4:21 13:24 14:8 19:22 28:5 35:4 51:5 53:8 117:13 137:5 137:5 180:16,18 229:15 262:8 271:20 289:5 300:9,11 312:24 323:15,16 329:13 331:16 354:20 355:11 433:2	cash 118:16,19,22 cast 163:8,12 catch 52:20 catskill 391:8 cause 16:14,20 98:17 181:18 caused 413:14 caution 44:11,15 caveat 11:16 133:18 134:14 caveats 133:22 cco's 357:21 cease 151:2,11 ceased 120:14 122:2 151:5 152:10 ceases 180:18,25 ceasing 141:11 cell 18:21,22 342:22 center 67:23 certain 26:25 53:16 56:8 85:25 86:3 96:5 101:20 120:14 159:24 166:11,21 172:18 211:24 212:2 235:14,19,22,24 265:13 279:12 284:24 297:24 307:8 345:24 378:11 392:24 406:22 411:5 414:22 415:22 422:14 certainly 70:19 72:11 161:11 165:15 245:14 252:22,23 324:24 334:18 352:11,11 352:12 393:21	certainty 334:11 certification 3:8 certify 429:4,8 432:9,14 cf 2:7 chain 72:6 167:8 167:22 170:16 173:6 430:13 chair 427:20 challenged 125:17 chance 56:12 57:12 310:23 change 152:23 195:15 249:11 299:6 310:10 340:12 356:20 433:5 changed 41:21,24 111:23 247:11 248:22 249:12 290:14 295:16,23 313:2 325:11 344:2 423:25 changeover 270:9 270:11 changes 308:2 channelling 342:16 characterization 107:9 136:23 characterize 98:16 98:20,22,25 99:12 99:15,19 100:17 100:21 101:8 106:12,15 107:12 194:13,21 227:10 245:16 259:11 308:7 367:9 characterized 88:19,20 107:23 198:24 418:24
--	--	--	---

[characterizing - communicated]

Page 11

characterizing 107:14 194:24 charge 22:20 348:10,12 charged 114:2 115:9 chart 283:11 287:24 288:9 290:16,19 295:15 296:14,24 297:19 298:2,25 301:7,21 302:16,19,23 303:9 304:2,10,12 305:13 307:10 310:9,17,19,24 311:9,10,12,18 319:10 charts 282:22 283:7,22 284:11 285:19 286:7,22 291:15 293:25 294:18,22 295:9 295:12 307:17 310:14,21 311:23 334:14 chase 67:14,15 check 385:9 406:3 checking 19:8 checks 275:13 chief 357:17 child 358:18 children 339:11 chiusano 1:21 5:3 432:7,23 choice 328:23 choosing 324:3 choppy 155:7 chose 340:14,19 chosen 341:4 choses 340:20	circuit 122:4 circulated 294:19 294:23 circulating 293:24 circumstance 160:11 302:8,9 circumstances 67:11 159:25 235:12 270:21 296:5 298:14,16 299:8 302:5 368:8 369:7,8 civil 1:19 claimed 28:18 claiming 155:25 309:9 clarification 24:25 31:12 34:9 37:12 37:16 46:23 65:9 112:7 144:15 204:15 267:21 286:4 326:5 340:3 421:6 clarified 104:9 144:14 clarify 42:25 56:3 65:4 103:12 126:2 156:18,19 195:9 300:25 325:23 362:4 367:17 421:16 clarifying 137:23 252:25 326:15 clarity 17:18 267:3 clear 15:15 16:13 37:11 131:10 170:5,14 178:10 234:13 264:12 267:5,6 339:23 347:14 350:7	351:11 354:25 355:10 367:12 371:10 377:7,11 377:12,15,17 394:5 418:17 clearly 140:15 157:19 172:8 281:12 317:7 361:15 393:4 408:3 clicking 129:13 cliff 274:13,15,18 clock 371:22 close 12:23 423:24 closer 12:24 cloud 346:21 cobra 152:5,7,15 153:12,14 coerced 156:2,7 cognizant 205:15 coincidence 94:25 colin 2:19 collaborated 62:5 collateral 90:6,12 90:18 91:15 colleagues 5:20 390:24 collectively 62:11 collin 49:21 column 316:23 317:20 columns 317:21 com 339:9 combination 340:17 423:11 come 22:15 69:3,8 138:7 147:22 148:17 166:22 179:10 253:18 287:6 341:25 369:23	comes 16:2 104:6 105:5 356:9 coming 20:12 22:18 384:25 392:21 command 72:6 comment 212:21 commenting 278:20 comments 232:16 233:8 commercial 74:3 commission 108:5 433:25 commissions 108:11,16,19 commit 104:5,14 104:19,20 commitment 101:24 102:2,4,8 102:10,15,20 103:2,21 104:3,6,8 104:11 committed 102:5 414:18 committee 288:19 288:25 289:8,14 304:4 305:2 committing 105:7 common 93:20,21 communicate 19:8 170:7 214:15 235:25 243:22 272:17 282:4 296:5 409:5 communicated 36:3 149:17 173:19 186:7,21 186:23 187:24 206:16 223:23 224:19 236:13
--	---	--	---

[communicated - concluding]

Page 12

239:19 241:17,21 244:13 245:20 246:22,25 247:20 248:9 254:19 262:2 271:24 272:23,25 282:2,8 282:14 313:3 357:15 358:7 399:6 407:8,9,13 409:4 411:18 communicating 255:7 256:8 267:14 272:3 382:19 communication 43:17 44:17 174:13 199:3 347:7 communications 36:18 44:18,23 139:6,19,21 173:24 174:22 197:23 198:7 354:15 360:7 367:22 370:23 371:11 373:4 412:16 companies 88:5 114:14 115:17 214:24 company 31:18 55:20 59:21 60:6 66:6 89:15,16,24 90:3 93:7,16 130:6 132:8,18,21 133:15,25 134:12 134:19 135:18 136:9 137:15,20 139:7,13,22 142:9 142:15,22,24 143:7,8 159:21	162:13 183:21 215:8 217:25 218:13 228:8 238:20 260:18 263:19,22,24 264:2,6,9,13 265:17 266:7 267:4,8,18,19 269:14 270:18 303:6 company's 269:21 comparing 61:17 compensated 96:22,23 108:3 compensation 106:18,20 200:3,7 200:22 201:14,18 202:20 244:15 247:15,18 281:9 compete 59:14 408:5 414:21 415:3 competing 408:15 409:19 complaints 51:23 complete 275:13 389:2,17 390:8 completed 129:15 420:13 completely 425:23 completion 70:15 compliance 50:18 293:9,9 294:22 295:2,4,6,7,11 348:17 353:20 354:12 357:17 366:5 369:16 complies 58:23 59:12 145:9 274:21 287:18 288:15 313:9,25	315:20 316:6 comply 31:19 32:5 358:2 compound 368:13 compounding 377:4,7 comprehensive 78:4 188:7,9 computer 18:10 18:14,15,18,20 42:5 322:6,8,10,13 322:17,17,19 323:5,25 324:9,13 324:17 325:3,6,13 325:15,18,19,22 325:24 326:6,10 326:13,18 327:10 328:5,13,20,22 329:18,19,21,23 330:17 331:22,23 332:17,20 333:2 333:17,19 334:6 335:4,7,12,20,24 336:2,12,25 337:14,17 338:5,7 338:15,23 339:2,7 339:16 340:16 341:8,9 342:2,23 343:16 344:7 345:20,25 346:5,7 346:9,15,15,25 347:17 348:4,7 350:4,10 352:22 353:11,23 355:3,4 355:5,8,19,23 356:10,24 357:3 358:19,21 362:8 363:14 364:4,25 373:24 374:6,12 374:15 375:2,14 375:19 376:2,7,10	376:22,22 377:12 377:16,25 378:12 380:13 381:6,18 381:24 382:7 395:12 computer's 342:16 computers 322:21 322:22 323:2,17 324:8,10 327:17 327:20 328:6,9 329:9,14 330:12 330:14 331:12 338:14 343:17,21 344:5,18 345:11 345:14,17 352:15 361:14,18 392:4 399:20,21 400:6 401:5 conceptually 356:8 concern 165:25 277:21 294:2 413:15 concerned 156:16 187:8 234:16,20 294:16,17,21 concerning 194:14 195:14 243:9 406:4 concerns 166:13 228:6 234:20 235:3,4 236:13 415:5 concert 84:3 conclude 244:9 408:12 421:15 concluded 213:3 428:21 concludes 428:7 concluding 418:7
---	--	--	---

[conclusion - correct]

Page 13

conclusion 426:9	consist 289:8	166:2,3 391:7	conversations 4:8
condition 164:25	consistency 302:2	continued 155:17	20:24 21:3 139:15
166:13 186:19	385:4	155:18 241:12	161:10,11,14,17
conditions 12:8,13	consistent 249:24	248:4	165:16 175:22
conducted 67:24	272:11,16,24	continues 152:23	191:19 192:2,14
conference 12:24	273:9 301:18	continuing 140:5	192:17,21 195:9
27:23,24 48:15	318:2 335:21	316:24	195:11 196:14
49:7 324:10	336:3 385:11	contravention	199:16 214:21
conferences 47:25	constant 269:22	336:4,8,16	215:12,15,19,23
conferencing 49:5	consult 16:3 297:5	contributor 160:7	216:2,5,8,10
confident 11:24	consulted 221:9	contributors	219:11 228:13
427:10	221:17,22,24	159:22	259:10 279:13
confidential	286:12 310:24	control 423:10,16	300:8,14 304:5
416:19	311:10	423:20	320:5 372:15
configuring	consulting 297:10	conversation	380:6,19 381:14
403:12	consummate	139:12 148:23	382:13,17,22,25
confirm 60:4,17	222:2	175:19,23,25	383:3,8,10 399:11
227:23 416:9	contacting 262:17	176:4,6 177:11,18	399:18,23 400:5,9
confirming 279:5	263:7	177:19,22,24	400:13
conflict 108:7	contacts 260:25	178:2,8,11 179:8	coo 241:21 280:10
conjunction 39:10	262:18 263:8	192:25 193:9,12	coordinated
127:8	contain 307:17	193:16,19,21	348:16
connection 8:3,5	318:3	194:4,8,9,12,13	copy 3:14,17
8:21,23 23:13	contained 33:21	216:14,17,19,20	209:9,9,12,24
35:4 51:4 52:8,10	37:5 55:24 405:3	217:17 219:5,6,14	291:2 311:12
73:12 92:2 103:23	411:2	220:11 223:5,24	428:16
189:14 222:15	contemporaneou...	224:25 225:6,9	copying 349:23
251:18 355:21	40:9	226:9 236:8,25	350:16 379:21
consent 384:21	contention 137:13	238:7,13,16,24	corporate 142:16
consequences	contents 224:24	239:18 241:18,20	correct 7:3,4
106:17	225:5 238:13	243:9,23 244:19	19:12,16 22:11
conservative	256:19 260:21	247:8 254:8 256:3	24:19 31:9 35:6,9
361:2,5	261:7,21	256:20 259:2,13	36:20 43:3 52:8
consider 102:9	contest 260:17	259:18,21,24	66:25 71:16 83:6
218:3	context 93:5,12	260:4,22 261:8,22	89:8,22 96:10
consideration 91:9	190:24 230:10	281:17,21 282:18	99:8 105:7,9
201:22 299:14	240:3 309:16	282:20 287:14	107:25 112:17
considered 103:4	continue 4:11	296:3 319:17	123:8,10 132:11
103:22	16:11 149:18	383:14 398:5,15	133:3,16,19 139:8
considering	150:9 151:3 162:9	398:19,25 399:8	139:17 140:6
259:20 260:3	164:4,15 165:18	401:19 414:7	144:8 149:20

[correct - cyrulnik]

Page 14

150:20 152:18 153:5,6,7 161:2 162:23 163:3 169:23,25 180:14 181:21 183:7,11 186:9 194:19 196:20 204:12 207:12 215:10 224:22 241:24 242:6 243:17 244:22 245:9 246:12 249:6 250:15 254:2 261:18 264:16 265:15 269:15 270:19 292:24 293:21 295:8 300:6 311:15 312:3,16 328:2 338:16 365:6 372:18 373:7 379:22 402:3,5 429:9 correctly 135:7 142:6,10 224:6 229:9 303:2 392:2 correspondence 32:4 296:25 370:2 371:8 cost 234:9 counsel 3:6,17 4:16 5:9 17:23 19:20 20:9 29:25 30:14,24 34:13 45:18,20,23,25 47:3 48:2,9 61:24 62:4 84:4 127:6 129:12 136:12,13 138:3 174:23 175:3,4,6,10,11 181:14,23,24	182:4,22 183:2,15 188:13,13 209:20 214:9 219:19 220:7,14 223:15 224:8 247:10 250:8,11,13,19,23 251:24 252:21 258:5 286:12,16 286:18,25 287:3 287:15 296:3,9,12 297:11,18 298:15 302:6 357:18 413:5,5,10 414:12 414:18,19,23 415:22,24 416:4 422:8,16 423:7,12 423:22,23 counsel's 188:12 counselor 14:10 count 30:4 counter 90:10 92:16 98:16 113:21 115:20 157:22,22 counterclaims 28:18 59:17 counterparties 88:10 284:13 counterparty 88:11,12,21 92:12 93:7 94:17 95:6 99:6 109:22 county 432:5 couple 6:25 21:12 49:2 50:11 63:12 80:8 98:6 129:6 130:21 131:20 142:7 144:16 162:18 180:8 223:6 242:25 290:18 369:4	course 211:9 253:24 424:20,20 court 1:2,18 3:13 4:20 5:2 6:10 9:11 9:12,14,14 10:24 12:15,19 13:4 75:2 77:19 102:22 117:4 132:14 138:4 154:21 183:8 218:21 240:20,23 386:5 416:8 418:14,18 419:8 428:15 courtyard 67:23 cover 23:25 24:5 245:8,21 246:5,10 247:2 248:10 292:15 390:17 425:10 426:14,22 coverage 150:19 151:4,12,18,23,25 153:23,24 covered 24:7,10 205:11 387:23 388:8 389:23 420:10 427:4 covering 24:18,21 25:15 26:3,8 60:15 covid 6:6 8:19 325:11 327:12,19 327:24 328:4 329:12 330:19,22 330:25 coy 22:6 cozy 6:5 cre 339:18 created 64:15,16 64:18,19,22 65:15 creates 118:15	creation 312:12 credential 341:22 credentials 324:5 339:19,22 340:15 341:13 401:25 402:9 403:9,17,22 404:6,10,12,19 credit 87:24 88:2 89:4 90:4,5,16,17 91:5,13,14,20,24 95:25 96:16,18 97:21 284:13 credits 94:22 criteria 329:24 cross 339:25 343:25 cs 84:23 cumbersome 34:6 cumulatively 48:20 210:21 211:8 curiosity 369:10 curious 370:13,22 370:25 current 314:20,25 317:2,10,15,25 318:3 currently 52:13 77:25 365:18 curtailed 162:17 curtis 46:3,11,12 46:18 47:4,8 custody 17:10 cut 30:20 252:13 cv 1:6 4:22 433:2 cyrulnik 2:4,6,16 2:17 5:16,17,18 6:17,19,21 12:2 13:10 14:5,24 15:3,10,18 16:12 17:12 56:16,21
---	---	---	--

[cyrulnik - dell]

Page 15

57:8 59:4 74:23 75:9 124:6 128:21 129:18,24 130:10 130:14 132:24 137:24 139:25 145:17 154:21 162:4 167:15 174:10 185:9 188:21 190:16 194:10 200:13 201:3 203:11,14 204:21 205:2 210:8 214:11 216:23 219:3 226:19 237:22 239:10 240:20 245:14 252:12 254:13 255:20,25 258:11,16 265:8 267:10 270:24 274:3,15 275:6 298:4 303:17 313:12,18 314:3 316:9 321:15 326:8 330:15 362:14 363:18 368:13 371:18 372:13 377:6,13 377:20 382:3 383:22 386:2 387:6,10 388:19 389:24 391:10,14 405:9 408:10 410:14 412:8 416:11 417:22 418:14 419:12 420:14 421:25 424:9,12,14 427:6 427:16 431:5	d d 3:2 429:2 431:2 da 2:18 20:17 45:20 46:4,24 47:18,22 50:9,22 50:24 52:6 76:24 161:19 data 36:5,17 38:24 42:12,17 316:3 database 36:14 373:10,14 date 1:11 29:18 39:14,17 40:19 56:24 123:24 129:22 145:7 158:17 167:11 177:2,25 182:3,11 203:4 217:19 237:7 251:4 266:20 276:20 279:15,16,16 280:2,5 290:8 300:16 399:10 433:3 dated 168:6 237:4 237:10 241:19 430:17 dates 71:6 180:11 222:7 343:12 david 2:18 50:13 50:16,17 68:17 289:19 day 66:24 75:6 83:21,21 85:15,15 171:9,12 323:12 388:12 399:9 406:11 412:3 420:3 429:19 432:20 433:22 daylight 4:4	days 3:16 53:2,18 132:9,20 134:11 de 253:14 deal 94:7,8,16 100:8,14 105:12 105:14 271:25 272:13 286:13 dealing 142:15 171:12 284:13 286:2 deals 101:13 114:3 dean 171:13 death 181:17 182:18 debilitate 193:5 debilitating 193:6 dec 275:17 decade 180:6,7 deceitful 119:25 370:8 decide 94:13 decided 69:4,9 206:14 decides 23:6 92:21 deciding 22:21 33:2 46:13 103:4 103:23 decision 23:2 33:12 70:22 82:22 83:25 84:2,9 86:11 90:21 345:5 345:11 382:14,25 383:12 385:8,17 385:18,20,24 391:17 400:15 decisions 79:20 80:2 81:17 82:17 84:11 86:2,3,4,15 209:21 348:18,22 349:3 359:20	declined 229:12 dedamo 66:10 dedicated 322:21 325:20 deduction 34:19 defendant 1:16 19:12 defendants 1:9 2:9 51:25 defense 23:14 defer 37:6 deferred 82:4 define 66:18 defining 119:4 definition 98:19 99:10 122:25 definitive 122:25 123:23 227:2,20 235:8 236:7,16,18 236:24 283:4 definitively 225:21 227:21,25 228:4 235:2,25 249:22 312:20 358:15 delegated 80:12 deleted 43:7,10 deletion 290:15 295:16 296:13 301:8 dell 378:5,17 379:5,9,19 380:25 381:11 382:7 384:18 391:18 392:4,7,23 393:6 394:10,12 396:4 396:10 399:15 400:2 401:22 403:2,23 404:13 407:16,20 408:12
--	--	---	---

demagnify 319:7	deposed 21:7 53:8	describes 105:25	376:19 410:23
demand 234:2	53:11,15,17,17,20	describing 164:24	411:6,21
demands 423:25	53:23	178:5	determined
demonstrates	deposition 1:15	description 29:19	104:21,22,23
317:8	3:8,9,14 4:16,23	235:15 430:7	105:2 113:7
depart 205:21	7:13,20,23 8:16,22	designate 390:15	359:16 422:10,12
215:8 220:19	9:21,23 11:2,11	designated 62:7	determines 22:13
222:20	13:12 15:2,23	62:13,18 63:11,16	348:8 349:21
departed 223:2	16:20,21 20:5,7,10	85:4 424:23	358:24
departing 205:8	20:13,16,18,23,25	designation 63:15	determining 86:10
206:24 227:12	21:4 27:21 28:2	318:6,8,12	86:11 102:16
253:15	30:2 34:14 37:15	desire 149:8	264:24 329:8
department 21:18	48:6,8 52:15,19,22	182:20 184:3	349:14
22:4,10 38:5 42:6	52:25 54:11,13,15	185:18 186:7	detriment 158:11
50:19 161:18	54:17,19 56:23	187:24 206:17	158:12 336:13
210:3	58:2,14,15 61:20	desk 323:6 325:2,5	353:14,15,19
departure 189:15	389:2,17 418:8	325:6 327:13,19	417:11
199:13 202:7	420:13 425:6,7,12	328:4 331:4	deutsche 70:3,4,7
204:3 206:10	425:24 426:9	338:10 344:14	70:9,17 71:12,22
210:19 213:13	427:20 428:4	desktop 342:17,22	72:2,5,20 73:2,3
218:13 220:25	430:9 433:3	343:5 344:13	73:11,17,21 74:12
221:2,5,10,15,18	depositions 8:9,10	despite 316:24	developed 73:7
222:2,12,16 228:8	10:3,3 52:12 53:3	destroy 380:2	deviated 210:12
228:15 234:17	53:13 54:16,20,25	detail 20:11	devices 18:12
235:6 236:15	55:4,8	161:10 292:10	339:5
238:20 251:18,25	depository 365:17	detailed 29:16	devote 162:11
253:8 259:14	describe 13:16	398:5	dies 180:23
304:6	51:8 55:17 67:10	details 82:10	differ 49:12
departures 222:9	87:10 100:13	276:7 326:16	differed 49:16
depend 32:17	368:7,17 369:2,8	378:10,19	difference 107:11
384:8	381:13	determination	107:17 140:25
depending 88:15	described 27:17	73:23 349:9	296:19
88:16 100:22	46:20,25 47:24	determine 37:7	different 74:7
193:3,4 307:5	98:21 99:25	82:6 84:4 199:19	101:5,7 102:13
328:16 384:10	101:12 106:13	231:4 277:17	109:3,18 128:3
385:15	108:11 111:18	293:11 301:15	140:11 170:18
depends 98:18	158:3 185:3	302:7 333:11	172:8 190:24,25
99:10 101:7	329:12 331:5	347:21 348:7	198:23,24 220:24
depiction 290:3	368:19 415:11	349:19 356:12	223:17 230:15
deploy 32:9	418:11 419:17	357:6 358:14	234:25 249:17
		360:24 363:21	341:25 362:2,23

[different - document]

Page 17

363:4 369:16,17 402:15 420:19 425:6 differently 174:11 315:25 difficult 89:14 141:18 236:23 diligence 95:12 diner 148:7 direct 21:20 57:17 72:8 77:4 108:7 118:7 130:19 131:11 200:6,19 233:17 405:10 directed 17:14,16 378:15 379:18 403:22 404:13 directing 201:10 direction 394:8 directive 393:12 393:23 394:7,16 410:3 directly 61:19 72:4 112:25 113:5 139:5 399:3 director 76:8,9,22 76:23 81:12,14 82:14 295:19 305:8 directors 76:10,19 disabled 337:6 disagree 143:5 380:16 401:13 disappear 310:18 disappointed 277:12 301:3,6,12 315:14 disappointing 299:22 disbursed 100:8	disbursements 100:7 101:17 disclaimers 292:16 305:24 309:15 disclose 413:21 disclosed 398:6 disclosing 109:11 discovery 197:19 discuss 147:7 165:8 166:14 171:3 189:25 190:2 258:6 285:14 420:15 discussed 139:12 169:3 178:18 179:17 195:3,5 197:4 198:20 204:8 213:21 217:18 238:19 253:7 258:2 260:9 262:7,10,12 284:9 301:11 355:14 369:19 384:16 398:9 407:10 discussing 149:7 172:14,22 213:9 218:17 225:24 discussion 74:11 74:12 75:16 146:3 147:9 148:24 161:4 168:12,19 169:10,13 170:12 170:25 171:19 172:2 173:21 178:20 185:14,15 185:17 186:5 189:5 190:8 193:3 193:6 217:13 223:19 225:3 242:8 244:13	247:24 250:14,20 259:12 271:9 321:23 347:3 398:7,12 399:2 425:13 discussions 50:6 173:4,8,16,18,23 173:25 174:9,16 187:13 188:6 189:13,17,18,19 190:19,20 191:3,5 191:11,13,23 192:9 195:13,25 196:16 199:8,10 202:5 206:20,21 213:7,18 247:11 248:3 249:15,16 250:6 257:24 259:5 281:2,4 400:10,19 disingenuous 414:24 dispensed 101:16 displayed 204:16 dispute 125:12 147:23 disputing 125:10 413:18 disseminated 306:7 307:11 distinct 142:19 186:22 distinction 142:8 191:10,11 230:7 245:3 distinguish 190:23 distinguished 127:4 distinguishing 190:18 233:9	distributing 350:17 distribution 301:3 district 1:2,2 4:20 4:21 divorce 141:25 dm 146:17,23 docs 105:12 document 35:6,8 35:11 37:4,8 57:10,11,19,21 58:4,5,8 59:22 60:7 61:13 62:2 63:8 82:9 100:23 101:2 130:8,18 131:2,14,15,22 132:2 144:4 145:14,19,21 146:11,21 147:2 147:17,19 167:12 167:21 168:2,21 169:24 170:9,21 171:20 172:15 173:12 175:17 176:17 203:5,19 204:16,20,22,22 209:13 227:22 228:3 237:15,25 238:3,21 239:4,16 239:23 243:6,16 245:12,23 247:22 249:7 255:19,21 256:25 257:8 260:7,19 261:5 275:15,23 276:9 276:15 278:7 283:2 284:21 288:3,7,10,12,21 289:2,22 290:6,17 290:21 291:6,11 292:6,25 293:6,16
---	--	--	--

[document - e]

Page 18

294:5 303:14 304:16,18 305:19 306:15,17,25 308:15,19,24,25 309:3,4,9 310:4,12 312:20,22,25 313:8 314:9,22 316:13,17,21 318:9,25 319:22 320:3,7 335:14 351:4,6 358:16 360:24 363:25 404:11 410:3 documentation 28:4 311:24 318:16 347:7 350:17 407:11 documenting 86:3 documents 13:24 14:3,7,12,18 15:13 15:16 17:9,22 28:9,11,12 29:24 30:7 32:24 36:7 36:17,23 37:13,18 37:22 48:5 51:3,7 51:9,11,19,24 57:23 61:21 62:7 62:21,23,25 63:10 63:14 84:22 86:2 92:4,8,12,13 100:22 105:14 119:24 137:22 143:12 252:18 254:22 308:16 310:5 313:6 347:9 352:17,21,21 357:11 360:15,23 361:23 376:18 379:5,9 383:13 392:6 407:15,19 408:4,14,16,21,24	409:8,9,17,18,23 410:4,12 431:7,8 doe 95:2,5 doing 30:17 32:9 49:23 74:8 87:3 120:5 129:19 135:10 149:25 156:3,18 268:6 285:11 345:22 346:3 348:6,10,12 351:10 353:13,15 353:17 364:9 367:24 370:20 389:11 417:10 425:9 dollars 101:15 double 190:5 doubt 125:4,16 126:7,11 140:2 145:24 147:12 170:2 239:2,6 291:24 315:5,8 doug 65:23 66:21 67:2,6,22 68:9,15 69:4,9,12,21,24 70:18,19,19,24 71:10,14 72:5,7,14 72:17,17,19 73:18 74:8 121:14 146:5 146:23 168:5,16 199:10 203:2,18 237:12 243:15 385:4,12 430:16 douglas 64:2 243:18 download 379:20 382:15 384:18 391:19 393:12,13 394:10,12 402:7 403:23 405:11,22	downloaded 401:20 406:25 407:4,8 408:16 downloading 391:24 396:3,10 396:19 406:4 dozen 424:25 draft 136:18 181:24 183:3,15 293:24 308:15,15 308:18,23 310:4,4 313:6 397:18 drafted 179:24 353:23 drafts 293:24 294:9,10 397:15 draw 127:2 drawer 344:14 drawing 245:2 drew 142:7 drill 150:15 drive 307:5,13 408:17 drives 307:5,8 337:5 dropped 155:4 due 164:7 180:2 349:8 duly 6:13 429:5 432:11 dumain 2:16 dunschee 76:24 duration 78:13,14 78:16,17,18,19 82:18 83:8,9,11,12 85:9,12 86:18,18 86:20 87:3,8,13,17 87:24 92:5,10,20 108:25 109:16,16 110:3,9,14,15,19 110:23,25 111:8	111:13,20,25 112:2,3,10,16,19 112:22,25 113:5 113:10,16,18,25 114:6,19 115:3,11 115:22 116:20,21 116:23,25 117:9 117:11,16,16,22 118:5,24 119:2,3 119:13 124:15,16 125:2,3 126:23,24 207:2 duties 79:18 83:20 119:12,17 120:13 120:15,23 121:6,9 121:13,17 122:5,9 122:20 154:14 duty 119:9,22 120:8,17,19 121:20 122:14,24 123:2,3 dvd 337:4,5
e			
e 2:2,2 3:2,2 29:3,5 29:6,8,10,12,17,21 30:13,15,16,18,23 30:25 31:2,25 32:4,8,21,23,24 33:5,9,14,15,16,20 33:22 34:4,10,14 34:24 37:3,5,14,23 37:25 41:2,12,14 41:17,19 42:2,3,12 42:17,22 43:5,6,10 43:15,25 44:8,17 44:23 167:8,22 168:3,4,16,23 169:9,22 170:4,11 170:14,19,22 171:16 172:5 173:6,20,23			

[e - employees]

Page 19

175:21 184:13,25 185:5 195:21,25 196:11,22,24 197:9,12,23 237:4 237:10 238:23,25 240:2 241:19 243:7,18 244:3 247:7 249:2 250:15 254:9,11 260:10,24 261:12 261:14,20,21 262:19,24 263:3,9 275:8 276:4,14,17 276:20 299:16,22 299:23 300:6,12 300:20 301:4 314:19 315:11,23 341:10,11 342:14 342:18,20 343:2,6 343:13 347:6,7 354:8,9,14,23 355:3,18 365:6,10 365:12,13,16,17 365:25 366:10,15 366:16,16,24 367:3,15,21 368:3 368:10,20 369:20 369:21,25 370:2,4 370:10 371:8,11 372:17,20,21,24 372:25 373:10,11 373:13,16,20,21 373:24 374:2,3,4,8 374:11,15,25 375:6,7,16,24 376:17 396:7,8,9 396:15,16,20 397:5,18,21,24 405:11,12,13 406:5,20,23 407:2 407:3,4 412:10,16	415:7 416:22,23 422:11,14,15 429:2 430:2,13,17 431:2 432:2,2 earl 425:16 earlier 26:16 58:9 58:13 71:25 72:21 82:19 106:13 109:20 112:2 113:20 157:17 168:18,25 176:25 194:5 197:13 217:18 249:25 284:9 293:11 347:4 369:19 379:12 414:6 early 53:10 66:5 162:17 244:6 ease 62:12 88:22 easier 95:3 eastern 4:4 easy 56:13 eat 240:6 effect 3:12,15 12:9 12:12,14 13:9 133:2,15 135:17 228:7 effected 136:20 efficient 32:8,16 34:3 334:8 360:5 efficiently 122:17 effort 72:17 407:10 efforts 273:23 either 29:18 40:8 49:2,7,7 72:10 74:2 99:17 107:18 118:8 126:19,23 127:11,14 129:7 151:15 167:16 180:20 191:24	192:17 194:14 195:2,5 196:13,17 197:3 228:9 233:7 378:15 389:11 elaborate 33:10 electronic 18:11 eligible 88:8 89:3 90:3 373:23 eliminate 73:24 eliminated 70:6 eliminating 73:25 elimination 183:13 else's 319:19 employ 25:9 161:6 162:9 245:9 247:3 248:11 employed 67:14 95:6,9 97:18,21 109:18 153:16 245:22 246:12 249:20 276:19 334:24 employee 14:21 17:25 24:11,15,23 25:4,10,14 26:5,7 26:14,22,25 27:12 29:2 52:3 80:17 80:23 113:9,11 141:12 149:3,22 150:3,12,17,18,22 151:3,11,19,21 152:2,4,9,10,14 153:2 154:7,12,16 156:13 166:5 218:4,10 223:11 224:3,13,21 225:10 226:2,3 239:13 240:8 241:6,9,23 242:10 242:12 243:3	244:10,21 247:25 254:16 255:17 256:13 274:7 279:20 281:8 290:9,25 291:10 294:12 297:13 307:6,7 314:12 317:2,5,7,8,10 322:12 323:7 333:19,25 352:2,4 352:19 353:22 355:15,17,18 362:6 363:12 364:2,12 367:20 369:11 370:23 373:6 399:21 404:22 413:20 employee's 152:17 330:18 335:22 345:13 362:9 363:15 368:20 370:10 402:8 employees 41:11 55:23,24 93:21,25 94:2 108:5,16,19 110:3 113:24 114:8,11,14 115:9 115:18 116:16 143:7 160:19 227:12,15 266:18 267:14 270:10,13 279:10,17 280:3,7 280:9,20,21 307:18 314:21,25 316:18 317:22,25 318:4 322:22 330:16,22,25 331:6,21 334:4,17 334:23 349:12 350:7,14,20,23,24 351:3,8,12 352:6
---	---	---	--

354:13,23 355:2 355:11 356:10 361:15 367:13 369:23,25 370:5 371:10 372:16 373:4,15 379:13 381:3 399:22 400:6,23 401:5,23 401:25 402:19 405:2 employer 109:21 141:6 employing 158:21 employment 142:18 152:17 180:22 215:6 277:9 414:4 employs 142:23 en 175:3 enabled 334:20 enables 77:17,22 373:12,12 encompass 143:20 143:25 endeavor 273:25 349:25 425:5 ended 70:5,6 113:12 241:11,15 ends 7:14 123:4 234:10 271:7 356:9 388:22,23 engage 89:5 103:24 171:10 175:3 415:6 engaged 40:17 175:5,10,11 183:2 183:15 233:2 251:3,5,13,17,24 373:5 engaging 115:19 158:2 385:10	engineer 56:13 enlisted 175:6 enlisting 404:9 ensure 218:6,6 285:23 307:16 385:3,10 391:23 enter 92:17,22 101:12 114:14 208:15 entered 92:8,9 116:13 208:18 226:13,23 227:18 entering 46:25 enters 92:11,12 104:12 entire 126:4 240:2 365:6 entirely 141:12 entities 8:12 21:10 23:12,17 24:12,13 24:14,15,22 26:2 26:13,14 31:22 35:5 41:4 43:22 44:9 55:21 66:12 66:24 75:24,25 76:7 78:5,7 79:5 81:13 82:24 83:4 86:24 92:19 93:20 94:4 96:4,24 97:19 112:17 113:12 114:21 117:15,20 118:15 127:7,11,15,17,23 141:14 142:16 144:22,23,25 166:5 181:6,9 190:24 205:23 207:5 entitled 154:8 199:20 200:8,23 201:15 205:8	206:25 214:18 392:25 393:7,7,8 394:3 398:11 401:4 404:25 entity 8:6 21:14 22:13,14,18,21 23:7,18,20,24 24:8 24:21 25:3,4,7,9 25:12,14,15 26:4,6 26:15,17,21 27:2,3 27:11,16,17 40:10 55:14,16,22 64:14 64:16,18,25 65:2,5 65:7,14,18 69:17 70:3,5 73:6,7,8 74:18,21 77:9,11 77:12,13,16 83:5 86:12 89:9 90:11 92:21,25 93:2 94:14,18 95:9,10 95:20 96:8 97:2,6 97:13,17,23 109:19,19,21 110:7,8 112:11 113:7 114:5,8,10 114:11,16 115:4,8 115:16,24 116:5,7 116:7,13 118:25 119:5,7,14 128:19 208:21,22 285:18 entity's 65:25 entry 145:5 430:11 environment 13:13 228:16 equipment 373:25 374:3 err 360:6 errata 433:1 erroneous 294:18	error 311:15 especially 109:10 172:7 244:5 335:25 esq 2:6,7,11,16,19 2:19,20 essence 94:22 essentially 68:23 73:24 240:5 342:15 established 134:17 estimate 30:11,12 39:20,25 210:17 et 1:8,16 2:10 4:19 ethical 119:23 evaluate 392:24 events 51:4 187:17 187:19 283:13 everybody 13:22 49:19 68:24 evidence 415:9 exactly 45:2 49:15 71:6 281:7 294:7 309:8 346:2 353:8 376:17 378:10 examination 6:18 428:20 431:4 432:10,12 examined 6:15 example 26:22 33:19 43:17 44:21 71:24 94:23 95:5 101:11 105:16 143:15 235:23 245:7 299:16 309:24 337:9 341:10,20 352:8 397:11 excel 315:21 exception 20:8 372:23
--	---	---	---

exceptions 60:20 268:21 excessive 211:15 exchange 106:22 107:5 256:17 397:21 418:16 exchanges 196:6 372:16 exclude 174:14 excluding 62:9 99:24 173:23 174:8 267:11 exclusively 37:18 96:3 97:16 excuse 78:15 125:25 162:16 374:21 397:13 execute 132:25 133:14 136:17 393:25 executed 92:4 127:13 135:17 136:3,5 executing 128:9 133:25 134:20 135:21 executive 267:13 executives 93:21 277:10 286:20 307:16 322:23 331:18,21 exercised 366:21 366:23 exhaustive 34:7 exhibit 7:6,11 56:12,15,17,23 57:5 129:3,9,21,25 130:5 145:3,3,6 167:6,6,10,13,15 167:17 185:2,13 202:23,24 203:3	203:20 204:17 216:24 237:6,8,9 237:23,24 247:21 274:20 287:16,21 303:16,19 311:3 312:6,10,12 313:20,22 314:2 315:19 316:2,11 317:24 333:25 430:6,6,8,10,11,13 430:15,17 exhibits 7:16 18:17 57:3 129:6 430:4,19 exist 180:25 209:25 374:23 existed 306:15 407:16 existence 118:14 existing 98:14,15 98:24 exists 64:5,8 209:13,15,16,19 227:24 228:5 exiting 183:20 expanded 148:23 expanding 230:15 expect 283:12,20 294:25 295:2 422:24 expectation 283:17 286:5,9 350:9,15 351:12 351:19 356:11 361:16 367:13 379:15 381:4 393:20 395:20 396:3 405:4 412:23 expectations 246:22 352:7,8	388:24 expected 33:24 247:14 297:8 301:13 302:4 expecting 244:24 245:4,5,7,21 246:4 246:10,18 247:2 248:10 249:5 250:4 383:16 expense 26:16,18 153:24 expenses 234:8 expert 44:5,25 45:8,12 46:5,19 expertise 45:18 46:11 expires 433:25 explain 98:7 103:17 140:24 230:6 266:24 421:8 explained 98:5 221:12 explaining 99:13 explanations 292:9 express 184:7 228:6 235:3 401:14 406:17 expressed 140:21 184:3 185:18 260:25 267:2 385:12 400:21 extend 90:7,21 109:22 112:4 113:2 121:22,24 241:12 extended 33:18 94:19 111:19 112:12 113:4,6,18	extending 104:16 extends 111:25 112:23 405:7 extent 37:3 79:24 209:13 297:2 336:11 347:18 353:10 357:4 358:11 359:11,12 external 296:25 extremely 202:14 eyes 324:4
f			
f 3:2 276:2 432:2 face 161:6 facilitating 403:11 403:19 fact 31:20 84:10 84:15 88:13 90:3 90:15,20 91:2,3,11 91:13,19 109:9 125:13 127:12 141:25 144:9,21 148:20,25 150:17 154:13 156:14 158:23 159:10 162:10 168:17 169:12 172:2 181:7 194:25 202:12 203:23 206:23 207:15 223:10,25 225:25 226:2 232:19 238:15 255:15 272:19 281:7 312:24 319:25 320:9 352:12 374:18 422:25 factfinding 415:20 factor 102:16,21 103:3,22 104:4,10			

[factory - first]

Page 22

factory 88:17	217:14 226:10	364:12 374:22	105:11 106:3,7
facts 298:13,16	237:11 238:17	375:17 376:9,10	108:12 109:22
299:8 302:5	241:19 250:14	396:25 397:3	111:19 112:23
failed 413:21	263:20 264:16	410:24 411:9	113:2 232:19,22
failing 218:3	federal 1:19 9:13	filed 4:19	find 30:16 42:22
fair 28:23 34:18	88:8	files 31:4,24 35:19	98:11 236:23
34:18,22 37:20	fee 109:5	41:10,13,14	314:20 369:18
38:23 44:23 65:9	feel 29:14 277:6	323:20 347:16,18	370:13 375:24
84:13 88:12 89:17	288:12 389:7	347:19 348:3,14	376:16 388:21
89:17,18 93:23	feeling 171:6	349:10,15,16	414:5 426:21
120:11 136:22,23	329:23	350:3 355:5,20	427:9,11,14
159:2,20 162:3,6	fees 19:24 20:3	357:21,23 358:8	finder's 108:20
178:4 181:10	21:11,15 22:13,22	361:7,13,18	finders 109:5
183:22 187:11	23:13,17 24:2,5,7	369:23 378:11,16	finding 96:20
198:3 207:8	24:10,18 25:16	378:19,21,24	finds 93:15,16
221:11,23 232:5	26:3,8 27:4,13	379:20,21 380:8	94:8 95:10
235:15 237:3	108:20	383:17 392:24	fine 22:7 75:3,7
244:8,8,8,25	fellow 68:17	393:3,5,21 395:19	99:16,18 124:2
256:16 261:24	felt 361:18 423:24	395:21,23 396:2	126:15 270:3
262:5,15 301:21	fewer 72:13 349:4	411:5,21	319:7 334:8
307:20 311:11	349:5,6 426:5	filing 3:7	353:20 378:7
334:7,9 340:3	fiduciaries 121:21	filings 28:16	finger 129:12
376:3 385:13	fiduciary 119:9,12	fill 394:15	finish 11:12 15:9
390:22,23	119:17,22 120:7	filled 47:17	360:2 386:3 388:2
false 273:19	120:13,15,17,19	final 167:23 309:4	389:13,14,15
310:25	120:23 121:6,9,13	380:21 383:12	390:14 415:15,16
familiar 55:13,15	121:17,19 122:5,9	385:2,17	416:11 419:13
77:8,10	122:13,20,24	finally 11:9	421:12 425:22
family's 361:8	123:2,3	finance 21:18 22:3	finished 164:14
far 34:17 400:8	fifteen 328:7 372:4	22:9 105:7,21	finite 101:15
fast 391:9	389:3	financer 92:14	152:16,20,20
fastest 343:11	fifth 2:10 261:3	financial 67:23	firing 259:20
fattaruso 2:4,16	figure 7:17 252:18	106:17	260:3
2:16,17 5:18	364:20 391:5	financially 5:7	firm 5:4 19:15,21
fax 275:18	file 319:16,16,18	financing 87:25	155:20 334:19
features 328:21	347:22,22,23	88:3,9,14 89:10,21	340:23
329:2,8	349:22,23 355:19	89:25 90:6,18,21	firms 19:17
february 121:16	356:8,16,23 357:2	91:16 92:3 94:10	first 6:13 7:11
121:18 181:25	358:11,16,23,24	94:18 95:7,25	57:18 63:12 64:25
191:9,15,19,21	358:25 359:13	96:16,19 100:6	65:7,10,11,14 67:6
203:16,23 213:2	362:7 363:12	101:14,20 104:15	67:8 69:18 73:8

[first - full]

Page 23

74:18 123:17 124:23 162:22 167:14,16 181:23 183:3 184:7 185:17,22 199:21 213:20 304:8 349:22 350:5 402:18 417:13 419:14 421:17 422:23 424:16 429:5 fit 319:3 five 30:6 48:4 51:16 100:24 106:23 207:3,5,9 207:11 211:9 219:12 226:14,24 227:18 235:9,19 235:23 236:9,25 257:3 263:17 324:19 326:25 327:3 372:7 390:10 398:21 fix 295:4 377:3 fixed 295:6 flag 12:5 340:7 flagging 340:9 fleischner 280:13 280:16,19,22,24 281:4,12,17 282:3 282:5,9,14 300:8 300:14 320:10,13 320:21 321:4 flexibility 87:14 flexible 159:22 flip 123:16 floor 2:5 flopped 123:16 flow 230:5 flying 165:19	focus 28:9 85:14 86:17 101:23 122:15 187:5 353:12 362:20 409:6 focused 85:16 101:23 230:19 379:10 focusing 120:24 241:16 focussed 230:5 focussing 29:12 246:19 folder 57:3 167:7 202:23 308:19 369:24 411:7,9 folders 407:25 409:6,7 410:23 411:5 folks 345:22 346:3 346:6 follow 98:15 99:14 100:4,10,16,24 101:6 106:14 107:2,13 111:5 119:24,24 128:5 147:20 164:21 168:11 170:12,24 190:4 238:4 253:25 281:25 318:24 360:19 417:22 419:15 followed 122:10 128:13,16 130:24 following 152:16 164:22 167:9 430:13 follows 6:15 143:10,11 foot 15:20	forbid 180:23 181:17 force 3:15 foregoing 429:8 forget 22:7 forgive 395:4 form 3:21 15:7,25 17:3 25:18 26:11 27:5 32:14 34:21 40:13 103:8 135:12 136:7 214:5 215:17 253:8 292:20 306:3 309:4 316:3 322:15 418:13 423:4 formal 78:3,7 136:17 292:14 formally 126:22 127:3,10 134:24 135:8,23 formation 66:2 formed 65:2 74:17 former 274:7 forming 73:12 forms 43:16 174:12,21 formula 106:10 201:24 formulate 417:13 418:11 419:16 formulated 421:18 421:20 422:23 forth 51:24 79:19 128:18 401:18 432:11 forthcoming 90:5 forty 372:7 forward 17:15 192:10 249:14 250:7,11	forwarded 415:21 416:22,25 forwarding 417:2 422:14 fouir 339:4 found 33:21 36:19 37:18 131:14 foundation 296:17 407:6 409:15 four 48:15 49:3 51:15 101:4 159:16 160:22 291:14,17,23 338:19 417:16 421:11 fourth 100:10,14 261:2 424:7 franchise 65:15 66:16 frankly 308:21 345:21 346:14 frayed 416:20 free 29:14 42:7 374:8 frequency 368:8 368:16,17 frequent 41:9 frequently 339:13 368:25 369:2 friend 171:13 friendly 259:13 front 14:15 18:11 18:14,21 145:19 168:4 227:23 228:3 270:4 fruition 202:17 fueled 223:10 fulfill 80:7 fulfilled 47:21 full 102:7 125:22 156:24 157:3,6,12
---	---	---	---

[full - go]

Page 24

157:20 158:25 159:6,10,15 160:2 160:9,12,24 162:12 365:11,15 366:14 378:9,18 fully 11:18 161:6 function 84:16 290:10 functional 288:16 310:9 functionality 327:14 functionally 82:15 82:21 functioning 152:10 functions 172:19 341:8 fund 78:13,14,17 78:17,18,19 79:21 81:7 82:18 83:8,9 83:11,12,24 85:9 85:17 86:18,21 87:3,8,13,17,24 92:6,10,20 94:18 102:5 108:25 109:16,17 110:3,9 110:14,15,19,23 110:25 111:9,13 111:20,25 112:2,3 112:10,16,19,22 112:25 113:5,10 113:16,19,25 114:6,19 115:3,11 115:22 116:23 117:23 118:2,6,11 118:11,17,20,24 119:3 123:8,18 funded 96:25 97:2 97:6,8,9,13	funding 100:15 112:5,12 113:4 117:3,5,6 funds 8:25 77:15 77:24 78:3,21,25 78:25 79:3,9,12 80:8 81:18 82:24 84:12 86:22 87:4 89:21 92:25 95:13 95:15 113:17 117:22 338:8 furnished 30:24 further 3:20 18:18 134:6 166:19 218:25 429:8 432:14 furthermore 350:13 future 34:3 359:11 361:22 fyi 276:4	338:13 382:16 generate 11:2 generated 355:21 generates 355:4 gentleman 73:21 genuinely 103:18 geographic 96:5 george 2:7 getting 6:6 17:7 70:5 95:13,14 97:9 107:2 108:2 108:2,24 202:14 208:13 254:13 273:14 297:18 317:9,12 329:24 422:4 give 16:13 35:16 35:18 48:25 56:11 75:2 78:6 105:16 105:22 138:2 176:12 210:16 372:7 373:2 386:6 388:14 given 10:2 31:20 35:25 47:10 88:7 88:13 97:17 109:8 147:20 149:10 150:5 164:6 177:24 235:11,11 272:8 292:20 296:5 298:13,15 302:4 304:4 305:13 332:8 334:17 428:7 429:10 432:13 gives 118:10 giving 52:13 134:25 179:2 glad 7:18 96:12 128:5	global 31:15,16,17 32:2,10,21 33:4 34:5 35:2,10,14,17 36:3,13,19,25 37:19 38:6,10,15 38:23 39:6,8,16 40:7,17 41:8,22 43:11,14,19,24 347:5 365:16,21 366:2 367:3,21 368:2 370:11 372:12,12,14,20 372:25 373:9 396:12,17 397:6 397:10,15,20,25 412:17,21 413:2 415:8,21 gmail.com 375:5 go 4:12 9:24,25 10:17 33:2 41:13 48:12 59:8 70:8 75:9 84:18 97:12 98:11 99:16 103:17 114:12 122:16 130:3,10 141:24 188:22 193:4 197:20 209:24 217:2 218:25 223:4 231:2 252:17,17 271:4 277:17 301:14 309:4 313:17,19 318:19 321:15 323:9 324:7 333:24 343:4 349:14 363:22 364:19 367:11 375:4,5 376:11 386:8 387:11,19 390:3 391:4,8,11 393:24
	g 32:12 354:9 375:15 376:13 gap 222:6 general 29:19 83:16,24 85:11 86:6 107:4 115:17 116:21 117:2 118:3,19,24 119:6 138:24 139:2 147:4 165:18 189:16 220:7 231:12 238:15,16 256:16 258:3,3 395:16 398:7 399:22 generally 11:12 130:15,17 228:11 258:5 268:23 272:2 312:10		

[go - hear]

Page 25

<p>395:18 397:22 405:21,21 411:10 420:5 goal 293:17 388:25 god 180:22 181:17 goes 33:17 34:17 293:4 404:21 going 4:3 17:15 34:5 48:24 51:24 57:14 71:20 74:24 86:10 104:16 128:20 137:25 155:6 165:23 171:10 175:13,15 183:20 192:12 202:4 241:22 243:21 260:17 261:13 266:10 270:25 294:3 296:6 297:16 299:9 305:21 306:2 315:21 316:2 340:12 355:22 360:6 371:17,22,24 372:6 377:21 382:4 386:10 389:9 391:4 393:20 395:21 411:8 415:12 419:9 420:18 421:23 426:21 gonna 15:8,11,21 53:17 93:14 97:12 101:16 123:7 127:17 128:21 129:4,7,9 158:16 166:3 167:22 192:11</p>	<p>good 4:2 5:16 6:20 53:2 56:12 74:25 387:6,15 427:16 gotta 180:4 gotten 19:19 43:7 government 90:11 gp 83:5 256:24 granting 35:22 grasp 378:9 great 55:12 57:8 120:6 121:15 145:17 203:14 275:6 317:6 424:10 greater 332:4 grenfell 70:4 gritty 82:9 378:18 grocery 364:24 ground 9:25 grounds 428:4 group 37:7 49:11 62:23,23 68:13 73:17,19 284:18 307:6 groups 80:14 guess 31:18 40:4 54:21 93:18 101:8 108:4 155:15 156:19 157:16 160:15 175:5 197:11 200:2 211:3 229:2 231:21 277:6 296:8 315:14 320:8 347:13 356:19 371:4 383:12 384:14 385:15 414:5 418:24 guessing 170:17</p>	<p>guidelines 335:22 guy 270:11 323:14 323:24 374:20 375:12 378:13</p> <p>h</p> <p>h 6:12 274:3 430:2 ha 220:23 half 8:20 235:9,20 235:23 236:9,25 244:18 246:20 257:3 263:17 415:13 416:9 419:14,24 420:6 hand 83:15 300:2 426:23 432:20 handbook 14:21 17:25 29:2 52:3 352:3,4 355:15,17 367:12 398:10 404:22 handled 227:6 happen 99:14 186:22,24 204:9 235:14 265:3,14 299:14 324:4 happened 204:7 215:15,23 216:2,3 216:11,14 221:14 225:21 235:9,19 235:22 236:8 250:9 261:23 266:2 272:6 273:8 297:24 301:19 319:21 330:8,11 344:20,23 345:3 381:15 happening 215:20 241:11,15 250:6 380:20 happens 112:14 121:25 255:2</p>	<p>375:13,14,17 376:6,12,17 378:10 happier 202:15 happily 247:14 happy 103:12 107:17 197:19 199:6 202:17 247:17 252:17 364:19 365:2 377:9 386:6 389:15 390:4 417:17 420:15,20 426:7 427:21 hard 163:11 318:24 harris 68:17 314:8 314:11 319:9,17 319:24 320:7,12 320:23,25 321:3 321:10 hat 94:13 he'll 165:25 head 11:6 30:5 68:22 73:19 77:2 422:5 headed 68:13,15 68:18 284:18 health 146:3 147:8 148:3,25 149:4,9 149:16,24 150:5 150:19,23,25 151:18,23,25 152:14 153:11,18 153:23 162:2,7 180:2 hear 10:4 12:16,21 77:20 97:5 117:5 218:22 320:15 321:4 362:13 387:8 392:2 395:5</p>
--	---	---	---

heard 135:6 179:2 229:17 320:12,13 320:21,25 337:8 337:10 hearing 12:2,18 394:22 heart 160:15 held 1:20 4:23 75:16 189:5 190:8 271:9 321:23 help 83:2,7,12 86:13,14 128:23 180:4 239:13,22 241:6,23 244:11 246:3 249:21 250:4 297:17 helpful 8:2 34:8 51:17 63:6 112:6 helping 240:9 hereinbefore 429:11 432:11 hereunto 432:19 hey 215:5 high 48:22 331:18 331:18 highest 402:25 highlighted 172:7 379:6 highlighting 144:21 highly 35:25 36:4 228:17 235:11,13 291:24 292:17 hikes 158:6 hired 68:5,7 70:2 70:17 hiring 70:20,22 historically 341:3 342:12 hit 203:9	hitting 359:15 hold 77:3,6 117:14 216:24 218:20 286:23 383:24 428:3 holdings 1:8,16 2:10 4:18 55:14 55:16,18,20,25 63:21,24 76:2,4,6 76:20,21 77:5,7 80:18,23 81:2 92:19 93:25 94:2 108:15 110:2,10 110:12,18,24 111:8,11,16 117:10,16 118:8 124:16 125:3 126:19,24 128:8 142:18 143:21,22 144:2,3,5,10 154:7 154:12 155:18 207:11 244:15 255:17 258:20 314:13 414:3 433:2 holds 87:17 home 275:11 325:9,13,17 327:16 328:9,14 330:18 331:2,8,14 331:24 332:14,18 332:22 333:18 334:20 335:6 336:22 337:15,16 338:6 339:16 342:23,24 343:17 345:15 349:12 353:24 362:9 363:15 376:23 378:2 400:3,24	homes 399:22 400:7 401:5,23 honest 119:24 hooked 323:2 337:17 hope 351:16,18 hoped 202:12 hopefully 7:14 hour 48:18 389:3 415:14 416:10 419:24 420:6 hours 30:6,6 48:4 48:19,21,25 49:2 161:7 334:19,21 372:5,7 388:13 house 46:7 326:18 327:10,18 338:18 338:25 344:8 housed 349:11 household 338:21 339:6,8 hr 161:18 210:3 227:6 hum 71:23 213:15 hundred 262:6,9 310:5 hunt 68:12,12 hypothetical 137:4,6,9 225:17 296:16	137:6,12,13,18 138:21 139:4,15 140:4,16 146:2 147:5,13 152:25 154:3,6,11,13 155:19 156:2,7 157:25 158:21,24 159:4 160:10 161:24 163:24 164:4 165:7 168:5 168:17 169:4,8,13 171:3,18 172:13 173:8 174:25 175:8,16 179:9 180:19 181:18 182:17 183:5,17 185:18,22 186:14 186:17 187:13 188:16 189:13,20 189:25 190:21 191:4,6,14 192:3 192:14 193:2,2,23 195:14,22 196:4 196:12,25 197:7 197:10,25 198:19 199:4,13,20 200:7 200:22 201:14 202:2,6 203:17 205:7 213:3,11,19 213:22 214:16,22 217:13,18,21 218:3,9,19 219:7 219:15,17 220:9 220:11 222:24 223:9,20,24,25 224:11 225:10,25 226:9 228:7,21 229:4 231:8,11,22 232:2,7 234:15,19 235:4,24 236:13 238:17 239:19
		i	
		i9 318:15 iacovacci 1:3 2:5 4:18 6:23 120:8 120:15,18 121:3,6 121:18 122:6,21 123:6,11 124:9 125:16 126:8,18 126:22 128:7 132:7 134:18,24 135:23 136:3	

241:17,21 243:24 245:19 246:9 250:12,19 251:17 251:24 253:9,21 254:24 255:6 256:7 257:17 258:23 259:3,6,10 259:12 260:12,16 260:23 262:16 263:6,21 264:3 266:11,13,19,21 266:24 267:11,15 268:25 271:16 272:4 273:6,13 275:22 276:4,13 276:18,23 277:23 278:3,9,13,15,19 278:21 279:6,9,19 279:22 280:4 281:13 282:5,15 283:6,10 286:5,14 289:11,18 290:15 293:13 298:21,23 299:17,25 300:4 300:11,17,19 301:9,19 302:14 302:23 303:4 304:3,22 305:12 310:16,17 311:13 311:19,25 312:8 312:14,21 315:12 316:19,23 318:5,7 319:25 321:2,4 332:16,20 333:14 334:13 377:25 378:2 379:13 392:5,13 399:15 400:2 403:8,18 404:6,8,17 405:16 405:18 408:14 413:4,6,10,19,20	423:9,10,16,25 433:2 iacovacci's 120:20 140:8 147:7 148:16 168:20 185:4 199:9 204:2 215:6 220:25 222:9 228:15 229:11 264:15 265:17 269:13,17 269:21 270:17 289:23 290:4 295:17,21 376:21 376:23 378:16 381:18,23 382:6 384:19 391:18 396:7 400:7 403:3 403:7 405:11 406:5 407:2 408:8 412:10,15 415:7 422:13 ian 2:16 iavocacci 156:13 idea 73:7 214:2,7 277:25 282:25 310:7,16 identification 56:24 129:22 145:7 167:10 203:3 237:6 identified 50:3 62:8 80:8 81:19 275:21 288:18 289:18,24 408:21 409:23 427:7 identifies 61:12 identify 23:19 26:20 41:14,19 392:9 393:3 407:25 415:9 427:2	identifying 94:16 115:25 144:11 311:25 328:19 iii 130:7 illness 189:14 imagine 6:9 39:15 49:16 109:7 286:11 291:21 296:23 306:19 imbed 141:23 immediately 47:18 47:22 73:6 375:8 impact 33:11 impetus 370:19 implied 402:17 imply 46:22 implying 153:9,10 371:2 important 11:3 165:20 178:22 285:17,22 292:23 293:3 309:22 378:23 425:2 importantly 138:3 353:14 improper 352:19 inability 161:7 186:15,19 423:9 423:15 inaccurate 265:5,6 294:2,17,21 319:12 388:23 inappropriate 417:19 inbox 32:23 33:14 33:15,17,22 43:5 397:23 inboxes 35:19 incapable 184:4 incapacitated 123:20 124:4,10	124:13,24,25 125:5,9,19,21 126:4,8 157:18,19 inception 42:13 65:18,20,21,22 include 155:19 301:8 318:4 396:25 included 134:15 195:10 213:10 286:15 357:17 includes 31:25 including 37:14 65:6,12 128:7 132:6 153:13 195:11,25 320:22 379:13 400:7 inclusive 153:11 262:9 inconsistent 247:19 248:5,8,19 272:5,11,24 273:9 273:12 337:20 incorporated 352:17 incurred 23:13 incurring 19:24 independant 255:24 independent 34:12 365:5 indicated 300:20 312:14 315:11 320:10 343:15 425:16 indicates 168:16 241:4 indicating 59:9 238:25 275:2 indirect 77:4 233:18,20
--	--	--	---

individual 56:6 122:14 141:14 152:9 172:25 230:11 272:18,19 291:10 296:13 322:22 361:6 individual's 222:16 individually 105:3 291:20 individuals 66:22 93:21 97:14,20 159:24,25 382:24 industries 68:14 industry 68:13 infer 168:24 infers 169:2 influence 299:25 inform 293:18 330:4 informal 78:8 information 35:24 102:14 272:22,25 273:19,23 277:13 277:18,22 278:2 278:10 285:24 287:7 293:4 300:2 300:15 307:18 310:25,25 312:3 312:13 319:12 336:15,15 355:7 370:6 402:21 411:2 416:19,20 423:11 431:7,8 informed 147:13 220:18 257:19 260:2 280:25,25 357:21 392:22 395:24 informing 367:19	infrequent 285:16 initial 65:5,25 69:17 100:23 341:14 initially 425:15 initiate 415:5 inner 375:13 inquiries 292:5,22 293:19 insignia 344:17 345:6 insofar 15:13 389:19 instance 42:21 246:4 instances 111:15 370:16 institute 345:5 institution 285:23 instructed 10:19 instruction 416:13 instructions 59:7 404:16 insurance 68:15 68:18 149:2,4,9,17 149:24 150:5,19 150:23,25 152:8 153:4,11,19 intend 136:15 intended 43:2 140:16 149:19 163:25 intending 137:15 182:24 220:19 239:20 intent 138:22 139:6,16 141:10 141:20 intention 132:10 132:21 134:13 140:4,9 149:21	170:13 183:4 303:5 305:14 325:23 379:25 intentionally 242:13 379:7 intentions 170:3 413:16 interact 272:8 interest 77:7 87:18 117:14,19,21,24 118:5,7,9,10,15,18 118:23 141:8 142:20 287:13 299:11 360:5 394:22 420:23 interested 5:8 94:12 102:17 369:12 432:17 interesting 414:5 interests 77:4 interface 47:3 284:20 285:6 interfaced 46:18 47:7 284:23 285:3 interfaces 45:19 interfacing 284:10 284:15 interjected 16:22 interjections 15:7 intermediate 78:19 internal 46:17,19 167:24 internally 45:19 294:10 internet 337:12,16 interrupt 15:23 interrupting 16:19 interval 329:21 interview 67:9,24	interviewing 67:19 74:6 interviews 67:20 intricacies 376:13 376:16 introduce 7:11 216:23 intrusion 380:13 421:7,11 invest 86:22 invested 118:2,16 118:20,22 investigated 59:24 158:14 investment 31:22 39:12,19,23 40:11 41:5 43:21 45:9 45:13 46:2,6,15 77:14,17,18,23,25 78:5,10,12,22 79:3 79:4,8,11,13,16,19 79:24,25 80:4,14 81:17,19 82:5,17 83:14,19 85:10,23 111:12 118:6 288:19,24 289:7 289:14,25 292:21 295:18 301:9 302:15 304:4,25 305:2,6 307:19 309:24 357:11 investments 79:21 88:6 investor 234:3,5 277:14 287:5 291:3,21 293:19 311:3 investors 120:18 121:21,24 157:23 158:13 228:10,14 228:18 234:16,21
--	--	--	---

235:5 236:14 256:23 267:15 271:15,23,25 272:4,8,14,23 273:5,18,24 284:10,20,24,24 285:3,7,12 287:13 293:4,7,14 294:4 296:7 299:10,12 299:15 302:11,13 303:3 353:16 417:12 invests 79:22 invite 73:11 145:25 invited 146:5 involve 89:6 involved 17:2,7 22:25 35:22 47:14 50:6 64:10 65:17 65:20,24 66:5,11 66:16,20,22,23 70:20 83:25 84:11 86:8,10 96:7 99:23 100:15 103:6 107:2 208:23 209:2 216:5,7 221:4 228:22 229:4,18 229:20 230:23 231:8,12,13,17,22 232:3,8,21,23 286:17,19,25 287:3 296:10,12 297:18,25 310:14 310:21 311:22 312:12 329:4,7 345:4,9 382:24 396:7 involvement 232:25 328:18	involves 100:6 involving 102:18 193:22 iocavacci 186:6 ipad 342:21 ira 108:6 isolate 186:20 issue 75:6 217:4 218:18 311:14 420:16 issues 7:14 46:7 160:16 164:8 180:3 378:22 item 235:10 items 59:24 317:20 336:3 392:9 397:23 iteration 397:5 j jamie 53:10 january 121:5,22 123:8,12 129:2 137:16 138:23 139:7 140:3,15 145:6 146:4 147:7 155:20 156:24 163:5,25 165:8 168:6,18,25 169:9 170:16 173:10 174:17 176:16,19 176:22 177:5,8 182:11 184:11,13 184:18,25 185:4 186:5 187:17,19 191:6,21 192:18 193:14 196:2 197:11,11 198:2 199:11 217:19 236:2 430:12 jason 2:6 5:17 6:21 386:23 410:7	417:15,15,16 jcyrulnik 2:7 jennifer 280:13 jeopardize 109:11 job 67:9 73:25 154:14 172:23 jobs 67:19 jog 164:21 john 68:12,12,22 71:25 95:2,4 121:14 318:20,21 johnny 53:14 394:9,11 406:14 joined 69:21 70:25 joining 71:12 joke 391:8 judge 3:13 judgment 359:23 360:4 june 320:2 376:24 junior 68:19,23 334:18,23 justification 371:6 k k 6:12 274:16 karyn 1:21 5:3 432:7,23 kate 2:7 keep 44:22 75:5 149:9 151:4 153:4 271:2 285:18 334:8 keeping 309:23 keeps 282:21,24 283:5 kept 349:10 key 102:15,20 104:10 155:6,8 359:15 kind 31:14 101:6 103:5 215:13	336:6 371:2 377:3 knew 281:8 361:20 know 9:9,13 10:6 10:10,23 11:11,15 12:3 13:15 16:16 16:25 17:5 21:6,8 21:14,16,20 22:24 23:9,18,19,23 24:16,21 25:2,8 26:17 27:9,16 29:15 30:5 32:15 33:7 35:10,14,20 35:21 36:2,9,22 37:6,25 38:6,9,11 38:12,18 39:14,25 40:2,20,22,23 41:24,24 42:5 43:19 44:13,19 45:4,7 46:19 47:9 47:13,17,21 49:7 49:14 51:15 53:5 53:6,7,14,19,22 54:21,24 58:7 64:4,7,13,18,19,24 65:5 66:17 68:17 69:20 70:2,21,21 71:7 76:13,14 78:3 79:5,7,11 80:11 81:16,25,25 85:22 91:23 98:2 99:22 100:7,9 102:9 104:4 105:23 108:4 113:19 114:7 116:3 121:14 123:15 127:19 128:25 129:10 131:4,9 140:8 142:4 148:9 149:2 149:5 152:12,21
--	---	---	--

[know - lawyer]

Page 30

153:20 158:5	291:12 292:12	393:23 395:2,9,15	381:7,16,17
160:14 163:4,10	294:9 296:4	397:9 398:16,25	382:14 383:7,11
163:14 164:19	297:22 299:5	400:8 402:24	384:16,20 385:9
171:22 172:7,9	303:9 304:8	403:25 405:3,8	385:12 391:20,22
174:21 176:21,23	305:22 306:10,10	407:13,18 409:9	392:21 393:12
177:9 178:20	308:2,8 310:22	410:24 413:11	394:8 395:24
179:16 180:11	311:8,17 312:18	414:7,16,21,25	396:9,19 397:22
182:10 187:23	314:14 315:16	416:25 417:6	398:13 399:5,10
192:25 195:10	316:4 317:14	421:5 424:17,24	401:24 402:24
196:17 197:3,9	319:15 323:14,18	425:4,11,18 426:4	403:5,9,17,18,21
198:13,16 199:25	324:12,16,20,22	426:24	404:2,5,11,17
206:6 207:25	325:9,10 326:24	knowing 31:5	405:10,20 406:3,7
208:7,8,14 209:7,8	328:7 329:2,6,22	129:13 228:16,16	406:25 407:8,12
209:14,17,21	330:8,11,21,21	312:23 366:11	407:18,24 408:12
210:9,15,23,24	332:2,6,25 333:4,6	367:4 385:21	409:25 410:22
211:3,5,6,8,14,16	334:6,11,17,22	knowledge 18:13	411:19,25
211:18,21 212:6,8	335:11,13,24	21:5 26:9 64:11	lan's 403:11,19
212:11,14,15,20	337:25 340:6,10	115:22 116:12	404:9
214:10 216:9,13	340:12 341:17	157:25 250:18	language 99:21
216:13 218:24	342:6 343:21	297:3 321:8	204:18 242:22
220:15,21,23	344:3,16,20,23	332:12 367:23	lapse 22:7
221:16 222:13,18	345:2,21 348:8	370:11,18 373:6	laptop 325:3
226:16,18 227:3,9	349:14,17,23	373:18 375:21	327:14 328:9
228:2,4 230:24	350:5,15 351:24	381:19 384:20	338:10
235:18 236:9	354:3,4,25 357:13	391:23 402:9	laptops 330:25
238:2 244:24	358:11,13,20	412:15	331:6 338:18,19
248:13,13,18	364:7,23 365:21	known 403:10	339:4,9,12
249:25 250:8	365:23 366:4,18	417:5	large 222:6
251:8 252:9,9,14	366:19 368:5,23	I	largely 425:8
252:15,16,23	368:24,24,25	I 3:2,2 6:12,12	larger 99:7 104:8
253:3 259:25	370:17,25 371:7	429:2	104:10 228:23
260:14 261:9,22	371:12 372:24	labeled 102:10	229:5,6,19,20,23
263:5,16 264:11	374:17,24 375:12	labelled 304:14	230:2 232:4,25
264:12 265:13,20	375:14,15,22	lack 267:3	233:4
265:20,21,22,24	376:5,5,6,12	lacks 407:5	largest 258:20
266:4,9 271:20,23	378:23 379:24	lag 288:8	law 358:3
272:16,22,24	380:23 381:7	lamb 53:14	lawyer 28:20
273:22 274:2,4	383:9,10 385:15	lan 53:19 54:10,13	50:20 51:2 120:4
276:5 280:19,21	387:17,21 388:3	328:17 330:4	219:15 297:6
281:9 283:9,17	389:4 390:10,20	332:23,25 379:4	306:11
287:8,11 290:19	391:15 392:21	379:19 380:6,8,22	

lawyer's 218:15 lawyers 27:23,25 28:14 50:3,4,5,5 51:6,22 257:15 layman 120:4 layman's 119:23 376:8 lays 45:18 82:9 lead 72:7 382:13 414:22,23 leading 400:15 leads 99:4 291:6 learn 395:22 learned 158:8 418:23 leave 69:4,9 72:19 182:20 183:18 184:4 185:19 186:7,18 187:9,25 199:21 200:8 206:17 214:17 239:20 256:10 283:23 leaves 183:12 296:11,20 leaving 71:11 73:11 189:21 193:7 206:14 242:14 253:17 297:4 left 18:15,18 69:12 69:13,15,20,21,24 70:24 72:25,25 73:3 74:15,16 182:13 289:17 296:22 304:22 318:25 370:2 387:17 leg 163:14,16,22 164:8	legal 5:4 23:20,24 24:2,5,6,10 25:16 26:3 27:13 50:18 52:7,10 100:22,23 100:25 101:3 220:15 222:10,14 366:6 428:12 legs 138:6 163:19 164:8 lehman 67:21,25 68:4,5,8,10 69:5 69:10,12,24 70:9 70:12,14,16,24 71:11 74:10 lehmann 71:21 lender 92:13 102:5 lengthy 72:6 425:24 lest 369:5 letters 196:2 level 292:9 331:18 334:11 365:22,25 402:25 levels 72:13,14 levine 2:19 56:19 129:16 li 2:18 20:17 45:20 46:17 50:9 76:24 liability 104:7,11 130:6 liberal 361:9 lifetime 193:5 light 162:2,6 173:5 liked 246:21 likelihood 315:25 limit 15:6 17:2 130:2 limitation 404:18 limitations 80:11 82:6,11 162:25	limited 130:6 200:12 270:22,23 271:3 line 11:12 168:9 168:15 169:4,12 169:22 170:19,24 185:4,16 235:16 237:13 289:16 386:3 426:4 431:13 433:5 lines 230:4 289:16 353:9 link 170:16 233:17 233:19,20 lippy 284:18 289:12 list 60:8,12,16,21 61:11,21,23,25 62:3,16 63:16 78:4 295:20 304:3 304:21 305:11 313:21 314:20,24 315:11 316:18 318:3 334:17 358:21 362:7 363:13 364:24 listed 62:22,25 146:17 292:13 302:24 305:4,5,7 310:8 317:21 listen 419:19 listening 362:17 lists 309:23 316:19 316:23 318:14 334:14 literally 37:9 litigation 8:22,24 9:7,17,19 24:19 158:9 209:5 412:5 litigations 8:4,6	little 12:24 34:6 36:14 57:24 67:11 74:24 122:16 137:22,25 148:24 155:7 270:25 315:24 363:6 387:13 402:15 415:13 llc 1:8,16 2:10 4:19 14:22 55:14 55:16,18,20,25 63:21,25 76:2,4,6 76:11,20,21 77:5,7 77:9,11,13 80:16 80:18,25 81:9,15 83:15 116:21 117:2,10 126:23 126:24 128:12,18 128:22 129:10,20 130:7,16,24 131:6 135:19 141:8 142:20 143:16 144:6,23 199:19 199:24 200:23 201:16,24 203:17 203:24 205:12,15 210:13 213:4 214:19 215:9 217:24 218:11 226:5 253:23 254:25 256:8 414:10,13 430:10 433:1,2 llc's 201:16 205:9 254:2 255:16 258:21 273:15 llcs 222:20 223:3 223:12 llp 2:4,9,16,17,17 2:19
--	--	--	---

llp.com 2:7	336:3,7 371:17,22	242:5 244:14,20	lunch 189:12
loan 88:19 90:18	398:12,16,25	261:20 276:17	luxury 426:3
95:8 105:20	412:9 424:18	287:6,12 290:8	m
113:10	longer 43:6 124:23	291:6,8,13 295:12	m 6:12 274:3
loans 110:5	152:4 154:13	302:16,18,20	machine 323:8,10
local 34:16	179:25 180:19	303:10,19 304:9	324:2,4 325:2
locate 209:10	208:13 240:11	304:12,18,18	343:15 354:16
location 146:16	241:13 242:10,12	308:15 309:3	356:17 359:2
locations 1:21	longest 48:18	313:5 316:22	364:4,13 375:8
36:8,10	look 57:2 58:21	317:17 328:20	376:19 378:21
log 323:4,16	60:3,11,16 105:22	334:14 335:14	403:7,12
339:17,21 340:14	120:5 145:2 167:5	347:23 348:6,6	machines 345:7
340:15 341:9	167:20 202:22	349:22 369:13,17	349:11 357:22
346:4,7 379:19	209:24 216:22	369:21 370:5,7	400:22 401:21,22
381:17 391:17	231:3 237:8 238:3	409:25 414:12	madam 419:8
394:9,12 401:23	240:2 244:4	415:3,19 426:3	magnitude 233:11
401:24 402:7,20	264:25 274:19	looks 57:24 61:16	393:21
403:9,10,23 404:6	275:7 287:16	61:18 146:8	mahar 274:2,4
404:13,19	288:8,16 289:15	160:17 238:23	275:10 276:2,11
logged 324:11	299:10 303:15	244:5 249:19	276:22 277:8,25
337:22 338:2,4	305:23 313:7,20	257:10 290:12,20	300:19 310:23
342:3 403:6 408:8	315:19 333:24	290:23 301:16	311:8
408:11	349:24 365:3	317:20 359:4	mahar's 300:5,12
logging 323:21	368:9,19 369:15	411:11 427:4	mahir 321:11
324:5 345:25	376:11 387:14	lose 151:12	mahr's 300:5
381:16	411:10 420:14	loss 42:12,17	mail 30:15,18 31:4
logical 181:13	426:25	lost 38:23 155:3	32:4,8,12,21,23
287:14	looked 143:15	lot 47:9 53:12	33:5,9,14,15,22
login 323:22	185:2 304:20	68:24 71:19,20	34:4 37:5 41:2
logistics 6:25	311:3 315:23	104:18,19 186:12	42:12,17,22 43:5,6
logo 409:24 410:2	344:15 367:3	202:18 249:14,16	43:10,15 44:17,23
long 54:24 128:13	379:8 389:21	278:14 413:14	167:8,22 168:3,4
128:15 143:10,11	looking 31:5 32:17	424:21	168:16,23 169:9
149:3,10,16,22	32:25 33:20,23	lou 5:25 17:17	169:22 170:4,11
150:4,9,12 153:2,3	34:23 59:10 61:10	18:19 49:20 201:4	170:14,19,22
153:10,10,16,19	61:14 63:8 89:20	426:16 428:2	171:16 172:5
154:6 159:22	114:3 147:2	lou's 424:20	173:6,20,23
160:7 161:5	148:25 149:2	louis 2:11	175:21 184:13,25
187:18 193:20	153:16 212:25	low 12:20 332:7	185:5 197:23
240:8 243:3 247:9	224:9 238:23	lower 234:9	237:4,10 238:23
324:7 334:19,21	239:25 240:4		238:25 240:2

[mail - mark]

Page 33

241:19 243:7,18	197:12 343:13	84:10,17 85:11,17	39:1 40:1 41:1
244:3 247:7 249:2	355:3 365:16	85:23 86:5 111:12	42:1 43:1 44:1
250:15 254:9,11	366:15,16,24	275:12 413:25	45:1 46:1 47:1
260:10,24 261:12	367:3,21 368:10	manager 77:14,18	48:1 49:1 50:1
261:14,20,21	368:20 369:20,21	77:23,25 78:5,10	51:1 52:1 53:1
262:19,24 263:3,9	369:25 370:4	79:3,4,8,11,13,17	54:1 55:1 56:1
275:8 276:4,14,17	372:24 373:10,13	79:25 81:20 83:14	57:1 58:1 59:1
276:20 299:16,22	373:16,20 374:8	85:23 111:12	60:1 61:1 62:1
299:23 300:6,12	374:25 375:6,7,24	managers 79:24	63:1 64:1 65:1
300:20 301:4	376:17 396:7,9,15	manages 81:6	66:1 67:1 68:1
314:19 315:11,23	396:20 397:5,18	managing 76:8,9	69:1 70:1 71:1
341:10,11 342:14	397:21 405:11	76:10,19,22,23	72:1 73:1 74:1
342:18,20 343:2,6	407:2 412:10	81:12,14 82:3,13	75:1 76:1,24 77:1
347:6,7 354:8,9,9	415:7 422:11,14	85:8 117:10 118:4	78:1 79:1 80:1
354:14,23 355:18	main 9:5 45:17	295:19 305:7	81:1 82:1 83:1
365:6,10,12,13,17	46:11 81:4 87:16	mandate 44:6	84:1 85:1 86:1
365:25 366:10,16	maintain 31:23	manhattan 67:15	87:1 88:1 89:1
367:15 368:3	32:3 33:16 44:8	67:15	90:1 91:1 92:1
370:2,10 371:8,11	149:4,22,23	manner 58:25	93:1 94:1,5,9,13
372:17,20,21,25	346:24 347:6,9,16	59:13 336:13	94:20 95:1 96:1
373:11,21,24	348:3	353:5	97:1 98:1 99:1
374:2,3,4,11,15	maintained	march 192:6	100:1 101:1 102:1
375:16,16 376:13	325:25	199:11 239:14,21	103:1 104:1 105:1
396:8,16 397:24	maintaining 346:9	241:7,10,24	106:1 107:1 108:1
405:12,13 406:5	348:13 403:12	244:11,16,17	109:1 110:1 111:1
406:20,23 407:3,4	majority 49:24	247:19 248:2,8	112:1 113:1 114:1
412:16 416:22,23	87:23 285:10	249:3,5 290:4,8	115:1 116:1 117:1
422:15 430:13,17	making 23:2 82:16	302:21,22,22	118:1 119:1 120:1
mailbox 30:16,18	82:22 359:19	304:2,9,14 305:12	121:1 122:1 123:1
31:10 32:11,20	360:19	310:10,18	124:1 125:1 126:1
33:4	mallet 46:3,11,12	mark 1:17 6:1 7:1	127:1 128:1 129:1
mails 29:3,5,6,8,10	46:18 47:4,8	8:1 9:1 10:1 11:1	130:1 131:1 132:1
29:12,17,21 30:13	management	12:1 13:1 14:1	133:1 134:1 135:1
30:16,23,25 31:2	31:21 39:18,22	15:1 16:1 17:1	136:1 137:1 138:1
31:25 32:24 33:16	40:10 43:23 44:21	18:1 19:1 20:1	139:1 140:1 141:1
33:20 34:10,14,24	77:9,11 78:9,12,22	21:1 22:1 23:1	142:1 143:1 144:1
37:3,14,23,25	79:2,19,25 80:4,6	24:1 25:1 26:1	145:1 146:1 147:1
41:12,14,17,19	80:13,14,16,25	27:1 28:1 29:1	148:1 149:1 150:1
42:2,3 43:25 44:8	81:3,6,9,15,17	30:1 31:1 32:1	151:1 152:1 153:1
195:21,25 196:11	82:2,5,14,16,23	33:1 34:1 35:1	154:1 155:1 156:1
196:22,24 197:9	83:15,19,21,23	36:1 37:1 38:1	157:1 158:1 159:1

[mark - mean]

Page 34

160:1 161:1 162:1	282:1 283:1 284:1	401:1 402:1 403:1	396:23 398:8
163:1 164:1 165:1	285:1 286:1 287:1	404:1 405:1 406:1	399:13,14,20
166:1 167:1 168:1	288:1 289:1 290:1	407:1 408:1 409:1	400:22 401:4,21
169:1 170:1 171:1	291:1 292:1 293:1	410:1 411:1 412:1	402:8 403:24
172:1 173:1 174:1	294:1 295:1 296:1	413:1 414:1 415:1	406:2,4 407:9
175:1 176:1 177:1	297:1 298:1 299:1	416:1 417:1 418:1	411:12 416:18
178:1 179:1 180:1	300:1 301:1 302:1	419:1 420:1 421:1	matter 4:17 30:5
181:1 182:1 183:1	303:1 304:1 305:1	422:1 423:1 424:1	45:12 52:12,16
184:1 185:1 186:1	306:1 307:1 308:1	425:1 426:1 427:1	54:15 55:6,11
187:1 188:1 189:1	309:1 310:1 311:1	428:1,8 429:1,15	138:25 139:3,19
190:1 191:1 192:1	312:1 313:1 314:1	430:1,16 431:1	196:3 197:5,23
193:1 194:1 195:1	314:19 315:1	432:1 433:3,21	202:3 253:16
196:1 197:1 198:1	316:1 317:1 318:1	marked 56:14,23	340:9 356:9
199:1 200:1 201:1	319:1 320:1 321:1	57:2,4 129:4,5,21	369:12 432:18
202:1 203:1,2	322:1 323:1 324:1	145:3,6 167:9	mattered 201:12
204:1 205:1 206:1	325:1 326:1 327:1	202:23 203:2	matters 46:3
207:1 208:1 209:1	328:1 329:1 330:1	204:25 237:5	166:21 353:11
210:1 211:1 212:1	331:1 332:1 333:1	431:12	maximum 101:13
213:1 214:1 215:1	334:1 335:1 336:1	market 228:10	101:19
216:1 217:1 218:1	337:1 338:1 339:1	marking 138:16	mean 15:10 18:3
219:1 220:1 221:1	340:1 341:1 342:1	markings 291:7	30:19 32:16 36:22
222:1 223:1 224:1	343:1 344:1 345:1	343:14,20 344:5,9	46:21 58:10 93:3
225:1 226:1 227:1	345:11,11 346:1	344:17 345:6	93:6,11 98:2,4
228:1 229:1 230:1	347:1 348:1 349:1	marks 75:13,19	103:18,19 105:17
231:1 232:1 233:1	350:1 351:1 352:1	138:11 188:25	124:20 127:3,21
234:1 235:1 236:1	353:1 354:1 355:1	189:8 271:12	128:15 141:22
237:1 238:1 239:1	356:1 357:1 358:1	321:19 322:2	143:24 144:7
240:1 241:1 242:1	359:1 360:1 361:1	386:12,19	150:3 155:17
243:1 244:1 245:1	362:1 363:1 364:1	marriage 432:16	162:19 163:10,21
246:1 247:1 248:1	365:1 366:1 367:1	mary 2:7	172:13 186:11
249:1 250:1 251:1	368:1 369:1 370:1	maryland 171:11	195:18 220:12
252:1 253:1 254:1	371:1 372:1 373:1	massive 416:17	222:22 230:7
255:1 256:1 257:1	374:1 375:1 376:1	matches 62:15	235:21 248:13,18
258:1 259:1 260:1	377:1 378:1 379:1	materials 18:2,4	252:13 256:21
261:1 262:1 263:1	380:1 381:1 382:1	31:24 347:10,12	257:12 258:11
264:1 265:1 266:1	383:1 384:1 385:1	350:12,18 352:16	265:23 267:9,18
267:1 268:1 269:1	386:1 387:1 388:1	379:10,11 380:5	282:13 302:20
270:1 271:1 272:1	389:1 390:1 391:1	380:23 381:9	308:8 312:25
273:1 274:1 275:1	392:1 393:1 394:1	382:15 391:19	313:11,15,19
276:1 277:1 278:1	395:1 396:1 397:1	393:14 394:2	317:3 325:19
279:1 280:1 281:1	398:1 399:1 400:1	395:11,17,18	336:7 346:14

[mean - missed]

Page 35

351:15 367:18 370:25 385:16 392:14 412:12 421:25 422:2 423:20 meaning 118:7 143:23 328:7 331:4 means 119:17 313:2,20 meant 98:6 135:7 156:9 174:14 226:3 257:3,7 295:4 362:21 mechanism 7:17 media 4:14,15 75:13,20 138:12 138:17 188:25 189:9 271:7,13 321:19 322:3 386:12,20 428:10 medical 12:8 149:10 150:5 151:4,12 152:8 153:4 160:16,24 161:22 164:25 166:13 185:19 186:8,19 medically 125:17 medications 12:7 12:10,12 medium 195:12 197:5 meet 67:6 168:17 285:13 meeting 53:23 146:2,10,14 147:11,13,21,22 147:25 148:4,6,10 148:12,14,15 149:8 163:6,7	168:25 169:3 170:3 176:25 177:3,13,16 178:3 178:9 184:12,24 185:3 202:25 203:23 204:6,8,12 212:25 213:6 220:10 268:20 399:10 430:15 meetings 48:8 49:9 267:25 268:8 268:12,13,16,19 268:23 269:2,6,9 mei 20:17 mel 2:18 45:20 46:16 50:9 76:24 member 24:12,14 24:23 25:5,8,13 26:2,7,13,22,25 27:12 68:19 117:10 118:4 122:2 126:19 128:7 130:23 132:6,17,19,25 133:13,24 134:10 134:11,18 136:15 136:19 141:15 142:24 143:9 166:4 205:8,9,22 206:24 223:11 255:2,16 256:11 258:20 273:15 289:25 302:15 member's 132:21 134:13 members 119:20 119:21 120:18 121:9,12,22,24 122:10 222:20 223:2 267:14 288:24 309:24	338:22,25 339:6 membership 141:7 142:20 memorialized 210:11 memory 12:9,12 13:9 22:7 51:7,10 51:12,18 238:12 254:11 256:5 mention 166:12 mentioned 17:20 71:25 messages 43:16 197:14,17,18 370:12 met 67:8,22 163:4 163:7 metadata 304:13 methodology 105:15,17,20 mic 12:23,25 michelle 64:3 microphone 4:9 microphones 4:6 microsoft 341:21 342:4 microsoft's 42:4 mid 276:3 middle 164:20 275:8 406:10 midst 158:8 mike 274:2,4 mill 266:9 million 100:8,15 101:14 202:2,13 210:25 211:4,7,10 211:15,15,18,23 211:25 212:2,9,16 mind 131:13,20 135:22 144:13 148:5 318:23	mindset 140:12 minimal 421:7,11 minute 129:16 165:24 minutes 16:20 21:12 83:10 98:6 106:23 131:21 138:7 142:7 144:16 223:6 225:8 362:3 371:19 372:4,7 389:3,14 390:11 391:5 398:16,20 398:21 427:12 mis 320:17 mischaracterizat... 179:13 mischaracterize 103:15 135:5 misdeeds 214:24 misinformation 312:4 mislead 293:14 296:7 299:10,15 306:13 misleading 299:12 303:3,25 305:11 305:20 306:8,13 319:13 misremembering 58:12 misrepresent 302:10 misrepresentation 287:10 misrepresenting 276:22 277:8 302:13 missed 30:9 69:6 362:18
--	--	--	---

[misses - needed]

Page 36

misses 171:13 missing 25:23 107:8 109:14 178:24 180:24 309:6,9,14,15,16 309:19,20 misstate 58:11 224:16 410:10 misstated 320:19 410:15 misstatement 410:19 misstates 142:12 224:15 225:14 245:12,13 303:13 misstating 17:6 245:15 254:5 255:19,21 303:21 381:22 410:8 mistakes 295:5,5,8 315:17 misunderstanding 189:23 misunderstood 422:20 mitigate 85:19 mlk 171:9 models 329:8 modified 408:4 moment 28:8,9 29:15 40:6 97:17 142:2 155:4 217:3 237:19 moments 69:18 80:9 130:21 131:7 238:8 382:12 monday 53:23 171:8 268:16,19 268:21,23 269:2,5 269:9	money 22:15,18 105:11 118:2 202:18 214:23 monica 2:17 6:2 7:8 13:20 18:21 49:21 monitor 371:12 monitoring 345:12 346:8 412:10,13 month 33:25 244:18 369:5 months 71:5 159:16 160:22 192:13 244:21 247:16 324:19 monticciolo 21:3,6 23:6 64:2,3 65:24 69:9 76:23 146:5 147:6 161:19 168:5 199:11,17 203:18,22 204:12 206:22 213:10 215:3 237:12 243:15,19,22 258:15,19,22,25 259:4,8 260:10,15 262:3,20 263:9 275:21 281:2 284:19 285:2 288:18 289:9 332:11 333:14 334:13 365:4,24 383:8,15 384:5,16 385:20,25 399:3,6 399:9,12,19 401:3 monticciolo's 385:21 monticell's 400:20 monticello 332:14 385:12 399:24	monticello's 146:20,23 monticiollo 20:25 161:15 morgan 70:4 morning 4:3 5:16 6:20 53:23 147:6 mornings 268:19 268:23 mortgage 74:4 motivated 223:25 motivating 206:17 move 129:8 192:5 424:7,7 moved 72:17 73:18 movie 336:18,21 336:25 337:4,23 movies 338:3 multi 390:20 multiple 97:19 100:6 120:23,23 181:9 muriel 66:9 mute 4:9 12:4,6 130:3 n n 2:2 3:2 6:12 274:16 429:2 431:2 name 4:25 5:17 6:21 9:2 21:25 65:8 68:17 94:25 274:13,18 289:23 295:21 433:2,3 named 8:11,13 names 9:5 22:8 78:3,6 79:6 334:2 native 342:14 natural 382:5	naturally 172:3 190:22 nature 308:16 310:5 373:20 408:5 nda 275:17 near 148:7 necessarily 57:21 99:11 104:14 145:23 151:12 necessary 217:23 218:11 224:4,12 224:21 253:23 255:14 necessitated 218:5 need 5:21 10:5 16:7,16 60:2 104:14 127:25 132:25 135:17 152:14 188:6 221:25 254:20 255:4 256:22 258:3,3 279:21 284:11 285:13,15 286:16,20,25 287:3 296:12 306:6 309:21 341:22 342:3 371:6 380:7,20 381:17 382:9 384:20 388:5,16 396:9,18 412:24 419:10 420:9,24 420:25 426:6 427:18 needed 42:23 122:10 172:19 188:9 219:17 221:19 319:11 341:6,7,13 349:10 357:25 359:11
---	--	---	--

384:17 401:23 414:9 needs 89:10,10,15 136:8 256:5,9 286:18 308:11,12 386:6 nefarious 417:2,4 417:5,6 421:20 422:15,24,25 nefariously 416:22,24 nefariousness 418:25 negative 190:5 negotiate 174:24 175:7 255:4 negotiated 136:12 negotiating 133:7 282:10,12 negotiation 208:24 209:3 240:12 247:9 266:17 neither 26:7,13,21 26:24 27:12 179:19 194:15,18 net 207:2,16 netflix 337:8,10,23 338:4 network 38:7 306:19,21 323:2,5 346:20,20 network's 376:7 never 42:20 126:18,22 127:13 134:24 136:3 137:19 163:24 165:15,17,25 166:25 167:2 318:23 338:2,3 new 1:2,22 2:6,6 4:21 5:5 6:14 9:11	9:25 329:16,18,20 329:24 330:5,7 345:7 370:5,5 432:4,5,8 433:1 nice 6:5 night 403:22 404:12 406:9,10 406:14 nitty 82:9 378:18 nobley 52:17 53:6 nodding 11:5 noise 12:3 non 11:5 44:17,23 50:5 59:14,15 108:19 115:24 116:7,15 120:4 195:11 275:17 326:7,11 390:8 397:23,23 414:21 noon 138:7 normally 308:16 notary 1:21 6:14 429:22 432:7 433:25 note 4:6 183:23 386:4 notes 63:7 notice 56:22 58:14 58:20 61:20 132:10,20 134:12 136:7,18 137:8,14 137:19 138:22 141:10,20 430:8 notices 133:9 134:15 136:4,6,11 noticing 5:15 notwithstanding 154:12 156:14 158:23 159:9 162:10	november 287:9 number 4:21 9:4 23:10,11,16 42:2 47:6 55:21 56:17 62:22 68:11 74:6 75:14,20 83:20 101:17 138:12,17 189:2,9 212:22 271:7,13 274:24 320:22 321:20 322:3 332:2,8 334:18 386:13,20 408:13 409:7 427:12 428:10 430:7 o o 3:2 274:16 429:2 o'keefe 53:11 55:2 289:19 oath 3:12 126:7 165:7 234:14 object 15:25 25:17 26:10 27:5 32:14 34:20 40:13 42:14 44:2 46:8 48:10 58:16 87:5 90:23 134:3 136:25 139:9 141:16 142:11 144:17 147:15 156:4 157:8 160:3 165:11 166:16 174:18 176:14 178:14 179:12 184:14 185:7 191:16 195:16 196:7 198:10 200:10 201:17 202:8 212:3,17 214:4 215:16 218:23 219:20	222:3 225:13 236:3,20 238:9 240:16 241:25 242:17 245:10 247:4 254:3,4 255:18 258:10 260:23 263:13 276:25 283:14 296:15 299:2,19 301:22 303:11 305:16 307:21 309:12 311:5 321:6 322:14 352:24 361:10 367:6 368:11 376:25 378:25 380:14 381:20 394:17 402:11 409:13,14 410:5,6 410:9 421:24 423:3 objecting 377:19 objection 10:16,18 17:3 27:14 81:21 91:6 103:7 135:11 183:24 184:19 186:10 187:14 219:9 224:14 250:16 303:8 308:5 363:2 407:5 objections 3:21 5:12 15:7 17:3 obligation 346:17 346:24 347:16 356:12,16,23 358:23 361:21 obligations 15:22 358:2 383:16 obscure 14:24 observation 360:20
---	--	---	---

[obsolete - opinion]

Page 38

obsolete 329:23 obtaining 89:25 obvious 120:24 340:8 obviously 71:15 247:13 268:21 359:17 420:18,22 424:21 425:21 occur 20:19 82:22 256:10 occurred 127:24 187:16 occurrence 42:12 october 1:11 4:5 120:21 122:2,7,19 124:9 155:21 156:24 158:15 192:19 196:2 197:11 198:2 213:25 214:14 269:19,23 270:19 283:23 286:7 287:7 298:22 301:8 311:13 312:2,15 376:15 379:20 400:16 403:21 412:11,18 419:5,18 421:18 422:13 423:2 432:20 offered 324:20 office 7:2 20:17 146:17,20,23,24 168:13,18 171:2 322:7,9 323:6 324:2,7,8,9,13,19 324:21 325:7 331:5,7,13,15,23 333:20 341:21 342:23 346:20	officers 357:17 offices 5:24 offshore 79:8,12 oh 128:2 164:15 164:16 237:22 258:11 268:5 305:22 318:21 319:5 347:11 391:14 okay 8:2,8,15,18 9:20,24 10:6,23 11:20,22 13:10,21 13:23 14:17 18:3 18:10,24 19:11,23 20:14,20 21:9 22:2 25:2 26:24 27:10,19,24 28:6 28:23 29:12,23 30:8,23 31:11 33:10 38:20 40:5 40:24 42:10 43:14 44:10,16 45:22 46:4,21 47:23 48:16,20 49:3,10 50:22 51:19 52:6 52:11,18 53:5 55:3,10,12 56:11 56:21 58:3,21 60:2,10,12,24 61:3 61:5,23 62:13,19 62:20 63:4,20 66:11 71:15 73:9 74:22 77:3 88:2 88:24,25 89:2,9 92:2,11 93:18 97:11,14 101:10 105:25 107:19 109:13 114:25 116:20 119:8 120:2 125:4 126:15 128:2	129:24 130:14 131:18 132:4 134:17 137:11,21 143:13 144:9 147:25 148:4,9 151:16,24 152:6 154:2 158:16 161:3 167:5 174:6 175:24 177:9,17 177:23 180:12 182:6,13 183:12 185:14 187:18 188:4 189:22 191:9 192:5,11 195:8 198:8,18 199:18 209:20,23 210:4,8 212:23 214:10 216:22 218:17 225:22 228:6 229:25 234:4 236:11 238:5,6 239:8 242:23 244:17 253:21 254:10 255:12 256:21 260:11 263:18 265:16 267:2 272:3 274:9,19 275:25 282:21 283:6 284:19 289:15 290:13 292:11 300:24 305:9 306:20,23 319:5 321:14 325:8 326:4 328:11 329:10 335:3 341:5 349:18 350:16 369:6 371:15 372:23 375:22 378:8 386:2 387:5	387:10 388:9 391:15 395:13 396:18 402:16 406:17 411:6,10 418:6 420:5 422:2 422:19 424:10,12 426:15 428:5 old 34:24 53:2 329:19 330:6,9,11 330:13 older 41:14,19 once 303:20 426:9 426:11 ones 24:17 34:12 49:23 121:2 181:13 227:17 231:9 ongoing 67:18 240:11 242:8 249:16 250:6 281:22 282:9 online 32:12 onshore 78:25 83:9,11 85:9 86:18,20 109:16 110:14,18 116:22 117:2,4,6,22 118:6 118:11 open 154:2,11 155:16 156:12,17 306:22,23 316:12 374:6 411:5,9 428:4 opened 319:15 opening 411:20 opens 375:15 operate 115:18 operated 41:2 opinion 301:25 401:7
--	---	--	--

opportunities 74:7 228:23 229:23 230:3,8,22 231:12 231:18,23 232:4 233:9 408:3 opportunity 7:5 138:4 230:12,13 232:9,20,23 234:2 234:8 407:14,21 opposed 31:6 32:20 33:4 101:15 105:18 113:6 156:17 229:24 243:12 322:21 331:4 opposite 262:14 411:17 opt 151:22 152:4 option 25:11,23 180:21,24 183:13 options 151:22 181:7,8,9,12 182:14 optiplex 378:5,17 379:6,9,19 380:25 381:11 382:7 384:19 391:18 392:4,7,23 393:6 394:10,12 396:4 396:10 399:16 400:2 401:22 403:2,23 404:14 407:17,20 408:12 oral 195:11 orchestrated 300:11 orchestrating 300:5 order 1:19 10:25 31:19 32:5 36:2 43:24 133:2,14	135:17 136:8 143:23 152:13 286:19 296:12 306:7,12 339:15 342:17 343:5 357:25 363:21 376:19 396:19 401:20 411:3 ordered 380:13 org 282:21 283:7 283:11 290:19 291:15 296:23 302:16,18,23 303:9 304:9 334:14 organization 282:22 organizational 283:21 285:19 286:6,21 287:23 288:9,17 290:16 293:20,25 294:18 295:9,15 296:14 297:19 298:24 301:6,20 304:2,12 305:13 307:10,17 310:9 original 3:9,17 64:24 99:8 100:18 100:25 originally 72:18 originate 93:6 94:20,21 96:4 98:11 108:17,20 108:24 110:5 115:11 116:17 originated 97:24 98:3,5,17,18 110:22 111:3 113:22 277:22	originates 93:2,4 95:10 111:17 113:16 114:6 originating 96:20 97:22 108:12 234:9 origination 107:13 107:15 109:5 114:2 228:22 originations 230:5 originator 109:17 113:8 originator's 109:20 outcome 5:8 432:17 outline 387:16 outlook 32:11,23 33:14,15,22 34:4 34:16 35:3 41:18 42:3 369:23 outset 15:6 outside 28:13 45:18,20,22,25 47:3 89:11,22 116:6,14,16 144:22 199:9 216:11 290:22 293:17 294:23 306:7 307:11 357:18,18 381:15 outsiders 306:22 overall 68:19 99:6 229:11 413:7 oversaw 281:9 overseeing 81:5 overtime 247:12 344:2 overture 71:16,18 owe 119:9,12,17 120:23	owed 120:7,13 121:2,5 122:5,20 owing 120:15 121:17 owl 406:14 owned 63:22,25 85:16 92:19 231:3 325:25 326:3 332:21 339:11 357:22 359:2 owner 258:19 ownership 63:22 119:5 owns 87:8 <p style="text-align: center;">p</p> p 2:2,2 3:2 p.c. 343:4 p.m. 168:6 170:17 238:18 428:19 package 90:13 174:24 packed 171:8 pad 14:16 page 58:22 59:3,7 59:10 60:14 61:8 98:9 100:2 131:14 167:14,16,23,23 167:24 204:19 243:5 275:8 288:14 289:17 292:16 295:14,19 304:19,21 305:6,8 305:25 309:15 316:16 430:6 431:4,8,13 433:5 pages 291:17,23 292:3 304:20,20 pagination 167:25 paid 22:21 108:24 202:14,17 207:18 207:19,21 208:2
--	---	---	---

[paid - period]

Page 40

208:11,13 210:17 211:14,22 212:7 212:12,20 240:10 241:13 246:2 248:4 250:2 273:14 317:9,12 pain 171:7 painting 109:15 paper 14:16 paragraph 59:10 276:3 paragraphs 59:16 paralegal 50:20 parameters 96:5 264:24 373:13 parent 55:20 111:11 parenthetical 246:4 parks 158:7 part 34:19 64:20 64:22 68:21,21 85:21 89:8 90:12 98:14 100:18,19 117:6 118:8 127:18,20 133:9 155:8,10 162:20 162:22 165:20 187:5 204:19,22 231:25 242:8 244:13 247:8 250:5 272:9 291:9 293:6 304:25 345:23 383:13 384:11 participated 27:22 particular 21:19 33:5 92:22 94:7,8 94:16 97:16 99:20 103:5,24 104:15 122:13,14 136:7	141:25 193:9 206:15 222:15 235:10 297:13 328:21 340:7 341:8,12 367:20 369:11 parties 1:20 3:7 4:12 90:10 92:16 98:16 108:24 112:20 113:21 115:20 120:24 133:7 428:9 432:15 partner 73:11 82:24 83:4,16,24 85:11 86:6 116:22 117:2 118:3,19,24 119:6 partners 85:12 116:21,25 117:11 117:17 118:8 119:2,12,13,18,19 124:16 125:3 126:19,23 128:8 129:2,17,19,20 130:7,16 143:16 143:17 144:6 207:2,9,10 430:10 parts 54:23,25 57:18 425:7 party 5:6 8:4,7,11 8:13 109:4 116:14 116:16 144:3,6 password 323:3 323:11 339:17 340:20,24 341:4,6 341:7 passwords 341:12 342:9 paste 291:2	paul 1:3 2:5,16 4:17 6:23 66:9 120:8 121:14,18 122:2,6,21 123:20 124:13 132:7 153:15 168:4 169:8 178:12 179:25 180:5,12 184:3 213:3 231:21 237:13 238:16,24 239:8 239:12 241:5 243:2,10,11,14 244:7,9,13 249:20 253:9,14,14,17 259:19 260:2 270:13 271:16 276:4 289:18,23 298:7,8 304:3 315:12 316:19 320:11,12,14,16 376:21,23 377:25 378:2 381:2 414:23 416:21 433:2 paul's 136:12 396:16 pay 108:15,16,18 155:18 159:8 207:15 246:16 paying 19:23 20:2 21:10,14 23:12,17 23:20,24 26:15,17 27:3,13,16,18 108:10 109:4 205:20 payment 90:10 109:9,10 payments 215:9 pays 22:13 23:7	pdf 167:24 304:19 pending 11:17 pennsylvania 2:11 people 23:10 47:7 47:9 49:12,17,19 49:22 66:5,7 68:25 71:20,21 72:14 95:9,17 96:2,19,22 160:17 266:22 272:13 275:20 278:14,16 278:20,20 279:4 280:16 284:23 285:6 286:22 293:18 306:24 307:13,14 310:8 320:9,22 324:20 334:15,19 349:5,6 people's 22:8 367:3 368:10 perceived 228:10 percent 63:25 105:23 262:6,9 310:6 percentage 106:4 107:21 109:5 206:25 percentages 207:16 perform 30:15 154:14 201:10 period 33:18 34:15 36:6 38:25 40:25 47:11 66:13 66:18 70:12 104:6 125:18 151:5 152:16,20 153:25 157:4,7,10,16 158:14 176:12 180:7 192:23,25 196:23 197:2,17
--	---	---	--

[period - point]

Page 41

197:25 199:5,12 199:22 207:3 211:9 231:13,15 245:8,22 246:11 247:3,9 248:8,11 249:18 266:17 270:12 284:8 311:20 325:10 328:16 329:14 333:21 340:13 344:2 357:13,14 358:10 419:17 periodically 342:3 345:18 403:13 periphery 161:19 permissible 354:22 364:22 permission 371:7 permitted 132:7 336:20 376:20,21 person 45:19 46:17 47:10 49:4 49:9 52:19,23,25 53:3 63:15 68:23 93:15 125:14 151:11 163:7 170:4 177:12 227:22 340:22 388:11 personal 15:2 19:18,20 23:14 56:7 146:3 147:8 160:24 335:12,14 335:17,20,21 336:2,13,20,25 338:14 339:5 348:3,9 349:16,19 350:3 352:20,21 353:11,22 354:8 354:14,23 355:7 355:18 361:19	362:6 363:12 364:12 373:16,20 375:15 376:17 379:8 381:9 391:25 392:10 393:4,5,21 395:11 395:19,21,23 405:12,13 407:2 407:11,25 411:2,7 411:22 416:22,23 420:13 422:15 425:3,15 personally 8:11 41:25 175:3 415:6 personnel 366:6 perspective 170:6 177:10 181:15 199:12 202:7 204:3 361:6 pertained 204:2 pertains 90:20 143:17 phase 113:21 phone 19:8 49:4 177:19,21 179:8 194:2,3,7 241:18 241:20 247:20 257:18,20 261:2 342:21,22 phones 18:22,22 19:2,4 phrase 40:18 174:11 326:9 physical 343:15 physically 43:12 123:21 148:20,22 167:4 pick 4:7 picture 18:19 109:14 182:19 362:7 363:13	piece 273:3 427:23 pieces 102:13 390:9 pinnacle 323:8 pinpoint 176:12 pittsburgh 2:11 place 4:11 9:8 39:16 41:3 44:22 64:9 107:3 115:23 116:6 127:7 148:10,12,14 149:9 172:2 176:7 177:12,15 178:3,8 184:24 188:18 193:13,15 383:2 429:11 placement 345:5 places 324:11 plaintiff 1:4,18 2:4 4:17 5:19 6:22 59:13 plaintiff's 237:5 430:4 plaintiffs 51:25 58:25 plan 152:14 388:2 388:2 426:17 plane 165:21 planning 147:14 plant 360:10 platform 49:5 platforms 44:18 97:21 230:4 play 106:14 108:18 276:13,23 played 35:11,15 107:12 please 4:6,9 5:9,13 6:10 10:9 11:11 12:25 15:6,21 16:4,18,25 17:2	58:22 65:3 75:21 145:11 154:22 164:15 168:10 183:24 189:10 190:15 224:18 240:19,22 274:20 287:17 313:8 314:20 315:19 340:5 362:20 381:13 382:11 391:7 421:14 422:21 424:7,11 428:18 poem 353:22 point 11:10,15 41:8 43:4 67:4 69:4,8,11 73:18 74:5 79:6 89:19 105:5 120:14 121:10 125:18,24 151:10 156:20 159:6 166:10 171:10,23 192:9 202:21 213:21 214:13 227:7 228:17,24 230:20 231:4 239:11 246:7 249:14,19 249:23 250:7,10 252:21 257:25 261:3,3 264:4 266:16 269:14 283:18 285:9 289:6 297:14 307:3 312:24 314:11 335:25 344:6 354:21 359:14,15 363:24 364:5 366:22 384:12 409:2 415:24 416:15
---	---	---	--

[point - prior]

Page 42

<p>417:8 418:8 pointed 225:9 256:12 points 47:15,16 72:10 244:6 261:16 365:8 policies 14:20 17:20 28:25 52:2 91:22 336:5,9,17 337:20 350:25 352:2,5 353:21 354:2,6,12 355:14 355:16 356:6 363:22 364:20 367:11 398:10 404:23 policy 108:10 109:4 364:11 365:2 portion 290:16 387:16 425:11,12 portions 397:23 position 137:23 220:17,24 221:7 223:8,22 255:7 266:12 267:13 274:10,12 283:22 290:4 314:14,17 positions 72:23 286:22 413:5,13 possibility 213:11 possible 4:10 12:23 27:11,17 43:13 149:3,10,23 150:4,10,13 153:17,19 186:4 208:4 215:14,22 240:8 271:21 273:24 285:25 324:24</p>	<p>possibly 219:18 post 128:21,25 232:2 posted 129:11 posting 18:17 potential 93:8 140:23 179:25 180:2 189:15 193:3,7 238:20 303:5 408:15 414:25 potentially 122:23 123:22 158:10 189:20 220:24 242:9,11 253:17 297:3 299:24 303:25 305:11,14 346:13 361:22 408:5 409:19 414:24 practical 82:12 practically 82:13 practice 227:12,14 297:5 307:15 401:8 practices 335:22 pre 241:19 preceded 17:17 precise 177:25 predate 369:22 predated 34:14 predetermined 101:17 predicting 181:16 preempt 16:23 preempting 17:7 prefer 384:12 preference 104:5 425:21 premise 141:20,23</p>	<p>prep 28:13 48:21 preparation 28:7 34:13 47:24 58:14 prepare 27:20 28:2 30:2 48:6,8 175:6,12 181:15 181:24 182:4,22 183:3 prepared 59:19,24 59:25 60:5,18 179:19 210:4 presence 199:9 216:11 295:17 381:16 present 2:15 presentation 291:3 292:13,14 306:4 preservation 360:14 380:3 394:2 preserve 43:25 346:18 356:21,23 357:4,7 359:8,10 361:21 380:8,23 383:13 392:6,25 393:5,8 396:20 398:8 401:4 405:25 410:4,11 411:8,15 preserved 356:14 357:12,25 358:10 358:12,17 360:25 397:6 preserving 360:7 379:4,10 380:4 383:17 396:23 399:13,14,19 400:22 president 294:16</p>	<p>pretty 120:3,3 135:6 342:10 preventative 383:19 previously 10:4 81:11 98:18 111:18 128:4 166:23 174:15 182:12 217:20 258:2 311:4,22 398:9 403:8 404:8 410:21 412:22 425:17 prices 106:9 prior 33:25,25 34:2 39:17 40:16 40:19 41:3 46:4 46:13,24 47:18,22 67:5 73:10 84:18 124:9 132:10,20 134:12,21 158:18 158:19 169:14 170:4 172:3 173:7 184:24 187:23 188:3,5 206:5 208:5 214:14 218:18 219:15 231:23 238:17 250:15,19 251:15 252:2,21 253:9,18 257:20,25 258:6 265:19 270:18 296:24 301:7 311:13 312:2,14 317:23 320:2 327:19 328:3 330:19,21,24 334:24 385:9 399:11 402:14 403:20 412:10,18</p>
--	---	--	--

[privacy - put]

Page 43

privacy 350:9 351:13 352:8 361:16 367:14 379:15 381:5 405:5 412:23 private 4:8 privilege 16:3 privy 216:14 probably 7:24 21:22 33:7 39:25 49:20 67:13 71:5 101:19 158:15 229:15 235:8 254:20 257:14 319:7 324:19 327:3 340:11 360:20 389:25 406:13,15 procedure 1:20 352:5 364:11,20 procedures 14:20 17:20 28:25 52:3 143:11,13,14 336:5,9,17 337:21 350:25 352:2 353:21 354:3,7,13 355:15,17 356:6 363:23 367:11 398:11 404:23 proceed 75:21 189:10 190:15 proceeding 5:13 52:8 process 35:12,15 46:14 70:20 129:14 183:13 249:16 281:22 282:10 293:9,10 294:22 295:2,3,4,6 295:7,12 297:19 301:14 358:13,14	412:5 produced 28:5 209:5,16 290:22 304:13 producing 36:6 production 35:11 35:23 209:22 229:11 profile 94:12 profitability 232:12,12,17 233:11,18 profitable 234:7 234:11 profits 207:2,16 prognosis 165:2 program 343:4 403:9 prompt 369:7 400:12 prompted 400:10 proper 16:10,14 307:15 properly 257:11 property 343:16 proprietary 416:19 propriety 406:18 prospect 71:11 172:23 prospective 217:14 218:12 251:25 253:8 259:14 304:6 protocol 31:6 provide 11:4,23 88:9 132:19 137:14 149:16 152:8 159:8 162:9 273:19,23 275:10 300:2 330:6 355:6	355:6 402:20 provided 11:19 29:7,7 51:6 61:24 62:3,16 130:23 132:9,19 137:8,19 138:22 187:3 197:19 201:24 205:16 210:13 214:19 253:24 256:9 260:15 287:6 292:10 311:2 329:18 339:12 345:18 403:8 404:7,8 423:12 providers 270:9 357:19 provides 134:11 151:22,22 285:24 providing 52:7,9 88:14 134:11 154:3 158:22 159:23 160:9 273:22 301:25 310:24 423:13 provision 130:20 131:5,19 213:4 provisions 59:15 130:20 203:25 psc 396:25 397:3,9 pst 41:10,13,13 public 1:22 6:14 429:22 432:7 433:25 pull 32:7 56:14 57:4 237:9 274:25 315:24 316:2 pulled 145:11 275:3 313:24 pulling 31:3	purchase 105:21 106:9 112:11 purchased 40:18 325:24 326:2,18 327:18 328:13 330:18 331:14,24 332:18,21 333:17 335:5 336:21 337:14 338:7,22 339:2,5,10 344:8 345:7,14 349:12 353:24 354:16 362:8 363:14 376:23 378:3 400:23 purchases 112:4 112:16,19 purchasing 106:3 106:7 pure 94:24 purpose 335:8 346:7,8 403:10,19 404:9 purposes 86:19 94:16 115:24 116:7,15 120:25 122:15 273:5 319:8 326:7,11 379:21 pursuant 1:18 80:13 128:12 134:9 135:18 136:20 197:19 207:19,22 210:18 211:11 222:11 383:16 398:10 pushback 414:20 put 70:13 101:19 107:3 244:2 261:15 262:19 263:8 278:2 364:3
--	--	--	--

[put - really]

Page 44

391:3 putting 311:23 344:17 361:17	166:17 174:4,9,15 174:19 176:15 178:15 179:5,13 184:15 190:17 191:2,5,12,17 192:5,13,16 195:10,17 196:8 196:21 198:11 200:11,16,18 201:4,19 202:9 204:15 205:14 212:4,18 214:5 215:17,22 218:24 219:21 222:4 223:17,18 224:18 225:14,18 233:7 233:14 234:24 236:4,11,21 238:10 240:15,17 240:18,21,22,25 242:2,17,19,23 245:11 246:25 247:5 248:16 249:25 254:4,12 256:6 258:10 262:13,22 263:2,4 263:14 267:6 268:4,7 273:5 277:2,19 280:17 283:15 284:6 286:24 294:14,15 295:13 298:18 299:3,5,20 301:23 303:12,23,24 304:24 305:10,17 307:22 308:3,7 311:6 312:22 313:2 316:15 317:6 319:8 321:7 336:7 347:13 352:25 353:8	360:3 361:11 362:2,18,22,24 363:8,9 364:6 367:7,17 368:12 377:2,10,18 378:8 378:14 379:2 380:15 381:21 382:8 392:17,18 394:18 395:2,6 402:12,18 410:6 410:13 415:16 418:5,5,9,17 419:15 421:4,14 421:23,24 422:4 422:22 424:5 431:13 question's 394:5 questioning 11:13 15:24 386:4 questions 6:25 13:12 16:5 17:14 29:16 86:19 88:24 134:22 173:7,15 177:24 191:22 195:13 238:4,8 279:18,20 284:25 291:21 340:4 388:5 402:15 417:16 421:11 425:20 426:6 431:12 quick 60:3 138:4 398:14 411:10 quickly 10:2 quite 285:16 325:17 344:15 411:16 quote 310:6	r r 2:2 3:2 6:12 274:3,16 429:2 432:2 ra 109:12 rackson 274:14,15 275:9 276:12 278:3 raise 362:14 raising 149:15 range 211:16 ranging 369:9 rare 363:2 rarely 262:8 raskson 274:18 rational 317:14 reach 71:9,10 73:10 reached 71:14 73:16 reaches 42:4 react 234:16 235:5 235:5 236:14 read 13:7 57:16 130:25 131:25 154:22,25 155:8 155:10,12 168:10 170:20 238:5 240:21,25 261:12 373:17 374:8 375:23 418:15,20 reading 241:4 243:4 245:25 257:5 427:3 ready 6:7 387:11 391:10 really 12:20 32:17 60:17 71:3 101:22 126:25 146:13 148:3 192:9 235:21 257:18
---	---	---	--

[really - recollection]

Page 45

277:6 326:15 350:5 385:7 413:13 421:12 426:20 realtime 359:20 360:23 406:8 rear 396:14 reason 11:23 16:23 125:7 126:12 145:24 147:12,23 149:15 159:7 160:9,25 183:14 186:17,23 187:2 206:9,15 221:6 224:11 239:2,6 295:3 315:5,8 371:5,6 394:24 401:13 403:5 419:9 433:5 reasonable 146:22 388:10 389:7 reasoning 153:22 reasons 120:25 335:17,21 rebate 88:9 89:4 90:4,5,16,17 91:4 91:13,14,20 rec 319:20 recall 8:9 9:10,15 20:21 24:4 28:12 28:15,17,21 29:3 29:14,17,21 30:17 39:5 40:24 41:7 41:15 42:11,17,21 42:24 43:3,9 52:4 52:23 70:11 71:3 71:6 73:5 74:19 134:25 135:3,10 135:13 138:24 139:2,11,14,18,21 140:19 144:20	146:9,13 147:11 148:6,12,19 149:7 158:5 161:9 163:5 163:6,16,18,20,21 172:22 173:3 176:9,10 177:18 179:23 181:23 182:3 184:10,17 184:22 185:5,20 186:2 187:2,22 188:20 189:16,18 191:19,23 192:2,8 192:8,14,17,21,24 193:9,15,25 196:10,10,13,23 197:16 198:6,13 199:5,16,18,24 201:21 204:6,7 205:25 206:8,12 206:13,19,19 207:5,7 209:2 213:6,7,9,17 214:7 214:21 215:12,19 215:24 217:12,17 217:21 218:3,17 219:5,11 221:4,14 221:21 224:24 225:2,5 228:13 229:16 230:18,19 230:25 231:6,7,11 231:20,24 234:14 234:19 236:10 244:2 253:6,12,20 254:8,24 255:6,11 256:19 257:3,23 258:25 259:8,17 259:23 260:21 261:7,21 262:11 263:19,24 264:2,6 264:11,19 265:2 265:12,16,19,21	265:25 266:3 268:10,18,22,24 269:4,7 274:7,10 274:12 278:15,19 278:20 279:4,9,16 280:3,7 281:6,11 281:23 289:4,11 314:17,24 315:4 320:5,6 321:12 334:4 335:17 345:9 353:8 357:16 379:4 382:16,19 399:8 399:11 400:12,18 401:15,18 409:3 412:2,20 419:2 recalled 199:2 225:8 recalling 177:11 399:24 recalls 185:10 receivable 90:11 receive 55:4 206:25 249:4 received 33:25 35:5,8 55:7 145:25 153:24 159:16 172:10,11 211:11 220:8 257:20 311:12 319:10 365:13 receiver's 370:18 receiving 159:4 273:15 receptive 71:16,18 recess 138:13 190:11 217:7 287:19 314:4 316:7 341:15 371:25 383:20,25 386:15	recipe 362:7 363:13 recognize 57:10 57:19,21 130:8,16 130:17 145:18,23 167:21 274:13,18 287:25 288:7 426:2 recollection 39:7 39:21 48:14 51:3 51:21 52:24 54:20 66:4,15,19 68:3 71:2,4,13,17 72:9 73:15 137:17 146:15 147:3,4 149:6,13 161:16 162:14 163:9 164:3,24 165:15 165:23 166:8,25 169:17 175:18 176:3,11 177:15 177:21 178:5,17 179:15 187:12,16 194:16,18,25 195:7 200:5 204:11 205:18 213:24 219:25 220:6 222:6,10 223:14 224:8,10 225:23,24 226:6,8 228:21 232:7 233:23 234:23 238:7,15 255:24 256:2 266:15 272:6 273:10 278:13,25 279:14 279:24 280:8,24 281:16 282:8,18 283:13 284:8 285:9 307:3 319:21,23 325:14
--	---	---	--

[recollection - relay]

Page 46

327:22 329:17 330:2 331:10 340:19,21,25 341:3 342:19,25 343:7,19 353:3 358:5,6 379:24 380:5,18 383:7 384:7,24 393:19 393:24 395:8,15 395:22 398:4,19 398:23 399:18 400:5 401:2,7,12 405:15 406:7,13 407:23 409:22 410:20 411:24 413:17 415:18 416:17 422:7 423:6,21 recommendation 214:8 218:16 219:19 recommended 220:15 record 4:4,13 5:11 5:22 10:17 17:6 19:9 75:10,12,15 75:18 138:11,16 168:10 188:22,24 189:4,7 190:7,10 190:14 217:2,6,10 267:6 271:4,6,8,11 321:16,18,22,25 372:4 381:22 386:8,11,18 387:4 391:11,13 424:16 428:13 432:12 recording 4:10 reduction 270:17 reed 2:9,17,19 5:24 7:2 19:15,21 19:24 20:2,6 50:4	reedsmith.com 2:12 refer 37:13,23 62:12,17 83:18 84:22 88:23 146:18 178:2 266:6 320:8 378:4 reference 62:12 88:22 133:6 184:23 185:6,11 304:24 305:4 312:7 413:24 referenced 21:11 34:15 69:17 72:21 82:18 83:10 131:6 135:9 144:4 171:25 184:12 185:15,22 193:13 247:21 256:3 259:13 344:10 382:12 referencing 135:13 169:9 176:25 179:3 381:15 397:4 referred 13:6 127:10 154:24 155:11 240:24 418:19 referring 38:21 42:20 62:10 83:4 84:9,14 86:25 97:15 100:5 108:4 119:20 127:12 128:24 130:21 131:5,6,23 143:14 146:19 150:17 157:24 160:22 173:22 176:7 222:23 228:25 246:8 254:21	267:4,17 291:15 297:10 325:4 334:25 353:18 374:4,10,13 377:24 382:22 refers 141:11 317:11 reflect 290:14 295:16 301:7 343:10 reflected 319:13 refrain 16:19 19:7 refresh 147:3 203:9 204:10 238:6,12,14 256:5 refreshed 51:3,7 51:10,12,20 refreshing 51:18 refund 88:8 reg 39:11 regard 205:16 regarding 20:18 89:24 146:2 164:24 173:9 174:16 192:3,21 199:25,25 200:2 228:14 263:25 264:7 401:19 404:18 413:7 regardless 149:24 292:19 293:16 334:5 357:23 360:7 registered 31:22 39:12,18,22,23 40:11 41:5 43:21 45:9,13 46:2,6,15 77:16 357:10,10 358:3 registration 39:11 39:15,17 40:20	46:14 regulated 285:18 285:22 regulation 364:11 regulations 32:5 360:11,14 regulators 286:2 regurgitating 244:6 rehab 163:3 reign 374:8 reimbursements 158:23 related 5:6 13:24 14:8 16:2 18:5 46:7 52:16 57:25 84:11 87:24 88:3 88:5 108:6 110:21 110:22 112:20 113:21 143:21,25 214:22,23 252:23 252:24 299:9 335:8 347:9,11 349:15,16,20 358:9 370:4 373:13 378:22 391:25 393:13 432:15 relates 86:24 relating 238:19 242:9 257:24 relationship 110:17,24 111:7 118:25 119:5 151:17 180:25 181:5 218:7 relationships 73:4 relative 81:25 383:2 384:4 relay 31:15,16,17 32:2,10,21 33:5
---	---	--	--

[relay - respect]

Page 47

34:5 35:2,11,14,17 36:3,13,19,25 37:19 38:7,10,15 38:23 39:6,8,16 40:8,17 41:8,22 43:12,14,19,24 347:5 365:16,21 366:2 367:4,21 368:3 370:11 372:12,14,20 373:2,9 396:12,17 397:6,10,15,20 398:2 412:17,21 413:2 415:8,21 relayed 225:20 relevant 103:22 104:4 359:17 reluctant 388:20 rely 309:7 relying 226:5 399:5 remain 149:2 150:3,12,16 153:2 154:11,16 156:13 166:4 267:21 269:22 292:23 401:16 remained 66:23 270:6 298:21 remaining 64:3 426:13 remains 132:5 293:4 remember 76:25 107:4 164:18 198:21 254:18 362:17 392:17 398:17 414:17 remembering 182:14	remote 13:11 remotely 1:20 4:24 345:25 remove 298:7 301:15 413:24 removed 283:7,10 296:21,23 298:9 298:24 301:20 311:12 409:24 repeat 10:5 13:3 25:19 91:2 115:14 116:9 240:18 267:5 rephrase 89:18 190:6 200:15 248:17 rephrasing 103:14 replace 382:6 report 259:5,9 273:18 286:21 406:25 reported 260:10 409:17 reporter 5:3 6:10 10:24 12:15,19 13:4,8 56:25 75:2 77:19 102:22 117:4 129:23 132:14 138:4 145:8 154:22 155:2,13 167:11 183:8 203:4 218:21 237:7 240:21,23 241:2 386:5 416:8 418:15,18,21 419:9 428:15 reporting 258:7 258:14,18 302:14 433:1	reports 35:25 represent 5:4,19 6:22 19:17 262:6 304:11 representation 177:4 represented 19:14 250:13,19,22 representing 94:15 276:12 request 62:4 75:4 275:17 317:24 319:19 329:2,22 405:15 requested 314:20 315:9 405:23,25 431:7 requesting 314:24 315:4 requests 35:6,8 359:12 require 45:3 342:8 342:8 360:14 required 31:23 40:16 43:23 44:7 44:15 172:19 273:17 357:12 368:6 402:2,20,23 requirement 39:10 133:13 347:6,8 requirements 31:20 45:2,10,14 144:11 357:9 requires 44:20 45:3 research 68:21 reservations 140:21 reserved 3:22 331:17	reset 270:10 resident 45:11 46:5 resolve 297:11 respect 15:2 17:8 33:14 34:16 43:11 44:17 45:8 46:2 56:4,8 59:20 74:20 76:4 79:21 80:7,25 81:2 82:17 83:8 84:23 85:3,8 87:19 91:9 93:10 105:2,4 106:13,14,17 109:15 135:25 142:17 158:4,10 159:23 161:22 162:21,24 165:2,4 178:7 181:4 194:11 196:3 213:16 221:8,9,14 221:18,22,24 222:8 226:8 236:7 241:9 247:7 251:25 264:14 276:13,23 279:21 280:8 281:22 282:2 284:12,12 297:12 298:6 310:15 318:15 347:5 349:8,9 350:9,10,12,23 352:6 357:9 365:10 367:14 369:6,14 370:3 378:11 381:5,16 383:17 392:20 399:4 400:21 402:25 406:19,23 414:6,7 418:23 420:19 421:4
--	--	---	---

[respect - revise]

Page 48

<p>425:23 respective 3:6 respond 59:25 170:18 171:5,18 255:12 responded 261:16 261:25 262:16 263:6 responding 196:20 225:17 293:18 responds 276:2 response 11:19 170:15,23 172:5 173:7 202:5 256:7 291:20 363:25 380:22 415:5 responses 11:4,5 257:17,18 292:21 responsibilities 172:24 responsibility 83:13 85:8 responsible 79:17 81:4 84:15 responsive 61:21 262:22 263:2 rest 131:25 171:8 339:8 restate 377:9,21 restaurant 148:7 restriction 270:17 restrictions 41:16 82:10 restroom 138:5 358:20 result 11:3 185:19 186:8 256:13 413:4 426:5 resulted 73:14 423:12</p>	<p>results 415:22 resume 70:13 retain 174:23 retained 428:12 retire 123:7 140:16,20 141:10 141:21 142:22,23 143:6,8 147:14 149:19 164:2 170:8,14 182:20 215:8 266:22 303:5 retired 124:4 208:4 271:17 272:4,20 273:6,14 276:4 278:4 279:7 279:11,25 280:5 281:13,20 299:17 300:21 312:2,8,21 315:12 316:20,24 317:4 318:7,15 319:25 320:16 321:5 retirement 123:23 142:17 144:12 147:24 148:16 168:12,20 169:10 169:13,18,21 170:25 171:18,25 173:9,18 174:16 174:24 178:21 179:4,16 183:18 185:15,16 190:2 190:19 191:6,15 191:24 192:3,15 192:22 194:14,21 195:2,14 196:4,15 196:16 197:6,24 198:20 199:12 213:13 260:17 264:7,15,20 269:5</p>	<p>272:17 278:17 279:3 300:16 retires 180:21 retiring 123:12,18 123:19,22 140:23 140:25 141:5,6 142:8 165:4,9,17 166:14 167:3,9 175:25 178:12 179:9,20 236:2 263:21 264:3 266:14,19,22 267:15 268:25 279:11 282:6,15 282:20 312:14 320:11 430:14 retort 254:15 retreading 361:25 retrieve 43:5 401:20 returned 329:19 returning 106:21 161:24 reverse 162:4 review 29:8 35:2,3 57:12 60:3 199:6 228:3 237:20 272:18 351:4,6 356:12,16,20 357:6 359:9 361:22 366:11,15 366:24 367:22 371:7 378:16 407:14,21 409:6 413:2,3 426:12 reviewable 373:22 reviewed 28:3,10 28:12,15,24,25 29:2,4,5,9,13,18 29:22 30:14,25 34:12,13 51:17</p>	<p>54:14,19,22,25 58:13,20 203:24 319:16 320:6 359:13 364:2 373:23 378:15,23 408:2 412:20 reviewing 29:24 30:7 48:5 57:23 58:10 199:18,24 360:22 366:10 392:22 412:14,16 reviews 57:11 58:5 59:22 60:7 61:13 62:2 131:15,22 145:14,21 146:11 146:21 147:17,19 167:12 168:2,21 169:24 170:9,21 171:20 172:15 173:12 175:17 176:17 203:5,19 237:15,25 238:21 239:16,23 243:6 243:16 245:23 247:22 249:7 256:25 257:8 260:7,19 261:5 275:15,23 276:9 276:15 278:7 283:2 284:21 288:3,10,21 289:2 289:22 290:6,17 291:11 292:6,25 294:5 304:16 306:17,25 308:25 310:12 314:9,22 316:13,21 318:9 320:3 408:2 422:11 revise 173:11 239:4</p>
--	---	---	---

[ria - right]

Page 49

ria 297:8	140:7,18 143:22	216:12,17,18	272:7,21 273:11
ride 414:25	144:19 145:22	217:16 218:2,14	273:20,21 274:6
right 6:16 7:10	146:7,12 147:10	219:10,19,23	274:11,17 276:16
10:10 14:15 15:20	147:18 148:11,18	220:4,5,13,20	277:3,11 278:5,12
17:10 19:5,15	149:11,12 150:2,6	221:3,13,20 222:5	278:18,24,25
21:13 22:23 23:3	150:14 152:11	222:17,25 223:12	279:8,23 280:6,12
23:8,15,22 24:3,9	154:15 156:3	223:13 224:7,23	280:18,23 281:5
24:20,24 25:6	159:12 165:14	225:4,16,23 226:7	281:15 282:7,17
27:7,15 29:20	166:7,15,24	226:15,25 227:13	282:23 283:3,8,16
30:4 31:7 32:13	168:22 169:16,21	227:19 228:2,12	283:24 284:2,7,17
33:6 35:13,21	171:21 172:6,16	228:20 229:2,10	284:22 285:7,21
36:10,21 39:3,9,13	173:2,13 174:20	229:22 230:9,17	286:8 287:2
39:24 40:12,14	176:8,18 177:7,14	230:24 231:10,19	288:11 289:3,10
41:6,23 42:16,24	177:20 178:16	231:20 232:6,14	290:7 291:13,15
43:8,18 44:4,13,24	179:14,23 180:8	233:3,16,22	293:2 294:6,20
45:6,16,24 47:5,12	180:10,15 181:2	234:17,18,25	295:10,24 296:18
47:20 48:13,24	181:19,20 182:2,8	235:7,17 236:5,22	299:4,21 300:7,13
49:14 50:8 52:5	182:9 183:6,10,25	238:11,22 239:5	300:22 301:10,24
52:14 54:18 56:9	184:9,16,21	239:22,24 241:3	302:22 304:18
57:20 58:4,6,18	186:12 187:15,20	241:16 242:4,20	305:18,23 306:8,9
64:6,12,17,21	188:2,11,15,19	243:5,8,14,15,24	306:18 307:3,25
65:13,19 66:3,8,14	191:18,25 192:7	243:25 244:4,11	308:14 309:2,13
67:7 70:25 71:9	192:20 193:11,14	244:12,19,23	309:25 310:13,20
76:12,16 78:2	193:18,24 194:4,6	245:24 246:6	311:7,16 312:5,17
79:10,15 80:10	194:16,17,23	247:6 248:12	314:3,10,16 315:3
81:10,23 82:20	195:6 196:9,19	249:8 250:21	315:7,13 317:12
83:17 85:6 89:6	197:8,15 198:22	251:2,7,14,21	317:13 318:11,25
89:13 90:8 92:6	199:15,23 201:7	252:4,8,15 253:5	319:14 320:4
94:5 96:9 97:19	201:20 202:10	253:11,19 254:7	321:9 323:13
103:16 107:24	204:5 205:3,10,13	255:10,17 256:18	324:15 326:23
108:22 109:6,23	205:17,24 206:4,7	256:23 257:2,9,13	327:2,7,21 328:3
111:5,23 113:20	206:11,18 207:3,4	257:22 258:13,17	328:23 329:3
114:7,13,22 115:5	207:13,17,24	258:24 259:7,16	330:10,20 331:25
115:13 116:2,18	208:6,11,17,25	259:22 260:5,12	332:5,24 333:8
116:23,24 117:12	209:6,11 210:2,14	260:13,20 261:6	334:3,16,23
117:18 118:12,13	210:22 211:2,13	261:11,19 262:3,4	335:10 336:10,24
118:18 120:5	211:20 212:5,10	262:21 263:15,23	337:24 338:24
121:7 122:3,8,22	212:19,25 213:5	264:5,17 266:4,23	343:6,8,18 344:11
123:16 125:6,10	213:14,23 214:6	267:23 269:3,11	344:19,22 347:19
125:11,20 126:20	214:20 215:11,18	269:16,24 270:20	347:20 348:20
128:10,20 139:20	215:24,25 216:6	271:18,19,22	349:18 351:20,25

352:13,23 353:25 354:18 355:13,24 356:11,18,25 358:4 360:13 361:9,12 363:21 364:18 365:8,14 365:20 366:3,12 366:13 367:8,25 368:15,22 370:15 370:24 374:16 375:4,11 376:8 379:3,11,23 380:17,24 382:18 383:6 384:6,22 385:14,22 390:2 393:18 395:7 396:13,14,20,21 397:7,8 398:3,9,18 398:23,24 399:7 399:17,17 400:3,4 400:11,17,25 401:11,17 402:4 402:13 405:14 406:6,12 407:7,23 408:18 409:3,21 411:24 412:19 416:16 417:3 418:22 419:6 421:21 422:6 423:6 424:14 rights 82:3 214:18 365:9 402:25 ring 39:2,4 177:8 268:17 rings 177:6 risk 81:5 84:2,9,11 84:16 85:19,20 86:8 robert 2:15 4:25 role 35:10,14 46:25 47:2,18,21	67:18 76:3 79:19 80:6,15,24 81:4 106:12 107:12 roll 72:16 room 6:2 12:24 13:17,22,24 14:8 14:13,18 17:9,23 17:24 18:12,23 rooms 324:10 rough 419:10 roughly 29:23 48:7,21 row 291:17 rudis 2:15 4:25 rule 364:10 rules 1:19 9:25 350:23 360:11,13 rulings 431:12 rumor 266:9,13 run 388:3 runi 2:20 s s 2:2 3:2,2 274:16 430:2 433:5 s.d.n.y. 433:2 sabrini 289:20 safe 48:20 salary 153:24 158:22 159:5,9,16 159:23 160:9 244:14 248:7 281:10 sam 53:10 sandbox 290:24 291:9 sat 7:19,23 8:10,15 9:21,23 10:2 348:23 save 129:11 376:9 397:24	saved 38:7,12 41:17 346:19 358:21 369:22 374:12,15,22 375:2,8,18,25 saw 184:23 311:24 312:13,19 saying 10:25 37:4 104:13 108:9 112:8 123:17 125:23 156:20 169:15 178:25 189:24 235:18 243:11 247:25 248:16,24 249:9 253:13 297:17,21 298:5 299:16 300:23 381:23 382:2 says 123:24 132:15,17 167:16 204:17 209:20 241:5 245:25 250:2 261:13 309:7 316:25 schedule 11:13 389:18 426:11 schedules 426:10 scheduling 20:15 school 339:13 schuster 53:10 55:2 scope 394:15 screen 57:7 61:18 130:13 145:16,20 167:19 203:7,13 237:24 275:5 287:22 314:7 316:5 319:4 scroll 288:14	scrolling 31:3 317:18 scs 26:23 sealing 3:7 search 31:6,10,13 31:15 32:20,23 33:3,22 34:4 41:18 368:3 369:24 373:13 380:2 412:21 415:18,20 searches 30:15,18 32:9 368:4 415:7 searching 32:21 33:4 34:11 sec 31:20 44:20,25 45:3,8,12 46:2,6 108:7 109:11 357:9 359:12 sec's 44:6 second 100:9,14 110:7 155:5 216:25 246:19 303:18 350:6 363:24 386:9 424:6 seconds 372:8 secretly 367:2,9 367:18 secrets 416:20 section 131:12 132:15 133:5 134:9 136:20 143:15 144:11,24 sector 230:12 sectors 230:15,18 230:20,21 231:2,4 231:7 securities 70:7 73:20 74:3,4 297:6
---	--	---	---

[see - short]

Page 51

see 18:22 19:5 49:18 57:3,22 58:24 61:7 63:18 74:9 101:25 102:6 112:6,15 116:10 118:21 146:16 168:7,8 170:15,22 170:23 171:5,15 171:16 185:12 203:15,20 222:13 230:14 237:14 239:15,17 242:5 254:9 261:20 274:22 275:9,14 275:16,20,24,25 276:8,10 277:24 287:23 288:17,20 288:22 289:16,18 289:21,23 295:20 302:23 305:19 312:7 314:18,23 316:17 317:19 333:25 361:20 379:16 385:5 386:22 387:20 388:4 389:23 390:13 415:8 424:2 427:8 seeing 145:13 163:16 seen 58:3,7 288:13 311:18 selected 243:20 244:2 328:11 340:22 selection 329:5 send 261:14 300:19 328:22 sender 370:17 sending 243:13,14 260:24 299:16	314:19 sends 169:8 sense 11:7 291:17 298:14 359:7 388:17 413:14 425:9 sensitive 4:7 sent 29:7 136:8 293:17 315:15 316:17 320:7 365:12 367:15 372:21,24 373:21 397:17,18,23 sentence 15:9 58:24 276:3 separate 19:19 29:25 30:14 35:18 38:16 47:24 54:16 72:17 118:21 139:5 141:8 142:16,19 152:6 173:20 234:22 255:4 292:4 305:14 331:14 333:18 338:6 341:5,7 351:18 372:11 separately 38:8 339:10 separating 182:17 separation 127:8 127:14,18,20,25 128:9 133:2,6,8,10 133:14,19,25 134:15,20 135:9 135:14,16,21,25 136:19 175:7,12 175:13,16 176:4 178:19 179:18,22 179:24 181:15,18 181:24 182:5,23	183:3,16 188:7,9 188:17 208:16,19 210:10,19 211:12 217:15,23 218:5 218:10 219:18 220:16 221:19,25 222:11 223:9,22 224:3,9,12,20 225:3,12 226:4,12 226:22 227:3,4,11 240:12 253:22 254:21 255:4,13 256:14 258:4,4 266:17 281:23 282:10,13,19 413:7 414:4,8,13 sequencing 177:10 series 233:23,24 seriously 350:25 351:9 serve 77:25 90:6 91:15 served 141:14 server 308:20 servers 265:17 269:14,21 270:18 270:22 serves 78:10,22 79:7 service 3:16 31:19 43:24 114:15 115:2,7,14,15,18 115:23 116:6,14 270:9 357:18 servicing 114:19 serving 47:2 90:17 143:9 session 49:13 sessions 28:7,13 47:25 49:3,6,11	set 7:6,8,15,18 73:6,6,8 79:19 86:19 128:18 289:16 329:21 332:14 339:18,18 341:14 353:17 432:11,20 setting 74:20 230:4 353:17 372:24 388:23 setup 329:9 330:17,23 331:3 331:12,17 332:10 332:12 333:7,12 333:16 334:12 setups 334:20 seven 138:6 372:5 388:13 428:11 severe 171:7 severely 125:17 shape 253:8 share 7:6 56:12 129:3 316:2 401:10 402:2 shared 322:21 369:10 402:10 403:18 sharing 336:14 sheer 232:18 sheet 275:18 433:1 sherman 289:12 sherree 314:8,11 315:15,17 sheuster 289:11 shifting 195:8 shopping 358:21 362:7 363:13 short 74:25 75:5 78:13,14,16,17,18 82:18 83:8,9,11,11 85:9,12 86:17,18
--	--	--	--

[short - sit]

Page 52

86:20 87:3,8,13,17	sign 385:2	49:14 50:8 52:14	201:20 202:10
87:23 92:5,10,20	signature 432:22	54:18 57:20 58:6	204:5 205:10,17
108:25 109:15,16	signed 3:10,12,15	58:18 64:6,12,17	205:24 206:4,7,11
110:3,9,14,14,19	341:23	64:21 65:13,19	206:18 207:4,13
110:23,25 111:8	significance 90:2	66:3,8,14 67:7	207:17,24 208:6
111:13,20,24	91:11 106:11	76:12,16 78:2	208:10,17,25
112:2,3,10,16,19	107:9	79:10,15 80:10	209:6,11 210:2,14
112:22,25 113:5	significant 83:20	81:10,23 82:20	210:22 211:2,13
113:10,16,18,25	90:19 91:18	83:17 108:22	211:20 212:5,10
114:5,18 115:3,11	374:14,18	109:6 111:22	212:19 213:5,14
115:21 116:20,21	silent 401:16	114:7,13,22 115:5	213:23 214:3,6,20
116:22,25 117:9	silva 2:18 20:17	115:13 116:2,18	215:11,18,25
117:11,15,16,22	45:21 46:5,24	116:24 117:12,18	216:6,12,18
118:5,23,25 119:2	47:18,22 50:9,22	121:7 122:22	217:16 218:2,14
119:13 122:4	50:24 52:6 76:24	125:6,11,20	219:10,23 220:5
124:15,16 125:2,3	161:20	139:20 140:7,18	220:13,20 221:3
126:23,24 138:13	similar 39:11	144:19 145:22	221:13,20 222:5
207:2 217:7	49:17 99:21	146:7,12 147:10	222:17,25 223:13
236:24 287:19	330:17 333:16	147:18 148:11,18	224:7,23 225:4,16
314:4 316:7	334:12 347:3	149:12 152:11	226:7,15,25
341:15 371:25	similarly 98:22	154:15 159:12	227:13,19 228:2
383:20,25 386:15	295:18 347:8	165:14 166:7,24	228:12,20 229:2
426:8	simply 169:3	168:22 169:16	229:10,22 230:9
shortest 48:17	302:3 395:5	171:21 172:6,16	230:17,24 231:10
shorthand 62:17	415:20	173:2,13 174:20	231:19,20 232:6
shortly 40:8 65:21	simultaneously	176:8,18 177:7,14	232:14 233:3,16
70:25 73:9 75:23	69:25 335:13	177:20 178:16	233:22 234:18
157:14	single 193:16,19	179:14,23 180:10	235:7,17 236:5,22
show 51:2	sir 12:16 132:15	180:15 181:2,20	238:11,22 239:5
showed 51:9,20,22	218:22	182:2,9 183:6,10	239:24 241:3
52:2 317:24	sit 21:13 22:23	183:25 184:9,16	242:4,20 243:25
showing 312:7	23:3,8,15,22 24:3	184:21 186:11	244:12,23 245:24
354:2	24:9,20 25:6 27:7	187:15,20 188:2	247:6 248:12
shown 197:13	27:15 29:20 30:3	188:11,14,19	249:8 250:21
sic 211:16	33:6 35:13,21	191:18,25 192:7	251:2,7,14,21
side 68:16,18	36:9,21 39:3,8,13	192:20 193:11,14	252:4,8,15 253:5
92:14 215:4	39:24 40:14 41:6	193:18,24 194:6	253:11,19 254:7
256:24 289:17	41:23 42:16 43:8	194:17,23 195:6	255:10 256:18
290:2 295:17	43:18 44:4,12,24	196:9,19 197:8,15	257:2,9,13,22
304:22 305:5,7	45:6,16,24 47:5,12	198:5,12,22	258:17,24 259:7
345:10 360:6	47:20 48:13,23	199:15,23 201:7	259:16,22 260:5

[sit - solomon]

Page 53

260:13,20 261:6	344:19,22 345:2,8	situation 43:9	27:5,14 30:10
261:11,19 262:4	347:20 348:20	114:16 147:8	32:14 34:20 40:13
262:21 263:15,23	349:17 351:20,25	149:11 150:6	42:14 44:2 46:8
264:5,17 266:23	353:25 354:17	160:23 161:22	48:10 49:21 57:6
267:23 269:3,11	355:13,24 356:18	162:3,7 185:19	58:16 59:2,6 75:3
269:16,24 270:20	356:25 358:4	186:8 287:4	81:21 87:5 90:23
271:19,22 272:7	360:13 361:12	293:12 297:9	91:6 103:7 130:12
272:21 273:11,21	364:18 365:7,14	329:12 359:7	134:3 135:11
274:6,11,17	365:20 366:3,13	situations 98:13	136:25 139:9
276:16 277:3,11	367:8,25 368:22	99:13 106:6,8	141:16 142:11
278:5,12,18,24,24	369:14 370:15,24	six 7:25 71:5 138:6	144:17 145:12,15
279:8,23 280:6,12	374:16 375:11	372:6	147:15 156:4
280:18,23 281:5	379:3,23 380:17	size 42:3 102:21	157:8 160:3
281:15 282:7,17	382:18 383:6	102:25 104:3,9	164:13 165:11
282:23 283:3,8,16	384:6,22 385:14	232:18	166:16 167:13,18
283:24 284:2,7,16	385:22 389:15	skip 129:7	174:18 176:14
284:22 285:21	393:18 395:7	slide 288:17	178:14 179:12
286:8 287:2	396:14,21 397:8	290:14	183:23 184:14,19
288:11 289:3,10	398:3,18,23,24	slides 309:17	185:7 186:10
290:7 291:13	399:7,17 400:4,11	slightly 109:3	187:14 191:16
293:2 294:6,20	400:17,25 401:11	140:11 179:5	195:16 196:7
295:10,24 296:18	401:17 402:4,13	234:25	198:10 200:10,14
299:4,21 300:7,13	404:15 405:14	slow 42:5	201:5,17 202:8
300:22 301:10,24	406:6,12 407:7,22	slowly 363:6	203:8,12 204:14
305:18,23 306:9	408:18 409:2,21	smith 2:9,17,19	204:24 205:3
306:18 307:2,25	411:23 412:19	19:21,25 20:2,6	210:6 212:3,17
308:14 309:2,13	416:16 417:3	50:4	214:4 215:16
309:25 310:13,20	418:22 422:6	smith's 5:24 7:2	218:20,23 219:8
311:7,16 312:5,17	423:5	19:15	219:20 222:3
314:10,16 315:3,7	sits 344:13,13	software 7:7 56:13	224:14 225:13
315:13 317:13	sitting 44:18 53:24	325:25	236:3,19 237:16
318:10 319:14	56:5 78:8,20	sole 288:24 403:19	237:21,23 238:9
320:4 321:9	125:15 126:6	404:7,9	240:16 241:25
323:13 324:15	146:16 147:5	solicitation 59:15	242:15 245:10
326:23 327:2,7,21	196:18 197:21	solid 171:8	247:4 250:16
328:3 330:10,20	198:21 225:23	solomon 2:11 5:23	254:3 255:18,23
331:25 332:5,24	234:25 325:6	5:25 7:3 10:16	258:9 263:13
333:8 334:3,16	333:15 334:9,22	13:15 14:2,23	274:22,25 275:4
335:10 336:10,23	388:12 403:15	15:3,8,12,19 16:7	276:25 283:14
337:24 338:24	404:5 420:3	16:12 17:5,12,18	287:21 296:15
343:7,18 344:11	427:19	18:20 25:17 26:10	299:2,19 301:22

303:8,11 305:16 307:21 308:5 309:10 311:5 313:10,14 314:2,6 316:11 318:18 321:6 322:14 352:24 361:10 362:10 363:16 364:15 367:6 368:11 371:16,20 372:9 376:25 377:11,15 378:25 380:14 381:20 386:22,25 387:5,9 388:9 389:4 390:22 392:12,16 393:15 394:17 402:11 407:5 409:13 410:5,11 415:12 416:3,7 417:15 418:4 419:6,8,19 421:10 421:21 423:3,18 424:4,10,13 426:8 426:19 427:7 428:5,16,18 solomon's 10:18 363:2 368:15 416:13 solutions 5:5 428:12 somebody 43:4 47:2 124:3 137:7 141:4,5 160:15 179:19 182:23 214:14 216:16 293:12 296:11,20 297:3,12 306:13 319:19 324:16 375:15	somebody's 160:6 somewhat 271:3 sophisticated 328:25 337:3 sorry 25:19 30:9 30:19 52:20,21 69:6,23 74:11 77:20 90:25 110:7 130:10 131:16 164:16 220:2 225:20 232:21 237:9 252:12 265:8 268:5 298:4 304:17 320:18 327:25 362:12 383:22 392:15,19 405:19 408:10 414:2 416:3,4 422:19 sort 28:19 31:7 44:22 65:5 72:5 72:11 73:13 101:13 187:5 230:12 290:23 373:9 414:25 426:4 sought 311:15 312:3,15 415:23 sounds 251:9 381:10 393:22 427:16 source 65:16 66:17 89:11,22 95:21 98:11 106:24 110:4 116:17 232:20 278:9 295:20 sourced 93:8 94:15 99:3,7 107:23 110:12 113:22	sourcer 99:8 sources 94:6,6 95:10 101:8 sourcing 93:10,11 94:8 95:18 96:7 96:20 98:21,23 99:2,16,23 106:16 107:14,15 108:3 108:11 113:10,13 114:2,12 115:9,25 116:8 229:5 260:25 262:18 263:8 289:17 290:2 295:17 304:3 305:5,7 310:8 southern 1:2 4:20 space 42:7 speak 20:4,9 21:7 54:10 132:15 232:11,23 345:17 speaking 20:22 82:13 218:19 219:15 413:9 414:11 specific 23:24 29:21 35:14 57:18 96:19 173:3 199:16 226:8 227:2,17 234:23 238:4,12 241:8 263:4 281:19 285:13,14 323:21 335:18 364:21 388:5 specifically 10:19 28:21 31:3 96:2 165:3 192:22 227:17 229:15 230:25 242:21 289:4 310:15	356:5 357:16 399:15,25 409:3 419:2 specifics 42:8 231:24 259:17,23 281:6,18,24 328:12 354:3 specified 105:11 105:12,14,15,17 105:18,19,20 429:11 specs 328:12,19 speculate 227:20 speculating 312:18 speculation 27:6 184:20 250:17 spend 29:24 48:7 spent 48:5 51:12 171:12 285:11 spinley 2:18 50:14 50:16,17 split 64:4,7,9,13 spoke 20:6,16 139:4 363:5 spoken 54:12 175:22 spot 324:4 spreadsheet 315:22 316:22 ss 432:4 stages 65:25 66:5 100:6 stamp 309:6 stand 371:24 386:14,14 standard 227:11 227:14 306:3 standing 160:7 268:20
--	--	---	---

start 38:22 56:18 56:19 65:10 69:16 72:20 87:21 124:7 167:22 302:21 368:16 started 6:24 67:19 73:3,17 74:6 75:25 249:9 266:10,13 344:16 414:22 424:22 starting 39:6,8 157:21 state 1:22 5:9,13 6:14 9:14 10:16 179:21 276:12,22 355:17 424:15 432:4,8 stated 178:17 179:15 302:3 305:13 353:7 statement 84:13 93:23 159:2 268:3 276:10,18 281:19 314:23 346:23 409:14 410:9 statements 352:5 states 1:2 4:20 109:8 242:3 stating 194:25 303:22 status 109:12 150:18,22 277:9 279:18,22,24 293:19 307:7 317:2,11,15 stay 70:9 239:21 243:2 244:20 stayed 66:23 70:11 70:14 stealing 350:17	stell 9:6 step 72:22 86:14 379:16 382:5 stepped 358:19 steps 202:3 391:23 steve 53:10 289:19 stick 181:11 stipulated 3:5,20 428:8 stolen 407:15,19 408:24 stopped 380:12 store 352:20 353:22 358:23 364:12 stored 36:7,11,18 38:2 307:12 355:22 359:2 378:21 404:11 stores 36:16 storing 362:6 363:12 straight 294:3 396:6 straightforward 156:11 strategies 68:13 streamline 422:3 425:5 stretch 138:5 strict 108:10 strike 181:12 318:8 structure 63:22 293:21 struggling 93:19 296:9 384:14 stuff 28:19 376:14 421:22 subject 45:12 133:17 138:25	139:2,19 165:4,9 166:21 168:9,11 168:15 169:4,11 169:22 170:19,24 178:12 179:7,9 185:4,16 193:10 196:3 197:5,23 237:13 253:16 268:25 334:13 369:12 387:18 suboptions 182:21 subscribed 429:18 433:22 subsequent 68:7 101:3 175:19,20 175:20,21 subsequently 69:25 subsidiaries 92:18 109:25 110:2,5,8 111:16 113:15,25 114:18 230:5 subsidiary 110:6 110:11 113:15 114:5 115:2,10,21 substance 56:4 214:12,13 243:23 255:8 362:20 383:3 substantial 425:11 succeeded 425:9 suffering 427:18 sufficient 218:12 suggest 169:12 suggesting 233:12 suggests 291:8 sum 214:12 summaries 55:4,8 262:8 summarize 48:3 86:21	summarized 238:24 255:9 summary 187:11 198:3 221:12 239:3,7 256:16 260:14 261:4 262:2,19 263:9 265:4,6,9 385:13 sun 406:15 sunset 415:2 support 415:19 supporting 415:9 supportive 384:13 sure 19:5 25:21 26:4 36:13 40:6 42:18 49:15 60:14 78:23 84:6 91:3 98:8 99:21 100:2 100:3 103:16 107:8,20 112:7 114:15 122:24,25 123:5 134:5 135:6 148:21 154:20 164:7 169:6 178:9 178:23 189:22 200:14,16 208:22 209:17 211:19 221:7 240:23 256:22 257:10 266:5 282:24 286:2 293:3 294:7 306:10 316:14 335:11,16 336:24 337:5 346:2 347:21 354:19 358:5 362:4,22 377:22 390:21 393:10 394:4 396:6 406:21 418:18 427:13,15
---	--	---	--

[surgeries - tell]

Page 56

surgeries 157:13 157:14 162:18 193:5 surgery 163:3 surpassed 208:3 surprise 315:10 surprised 198:8 198:17,17,19 276:21 277:4,4,7 277:12 315:16 surrounding 162:17 surroundings 13:14 suspect 265:14 sustained 66:12,18 363:19 swap 329:15 swear 6:11 switch 178:22 287:5 switched 41:22 140:19 sworn 3:10 6:13 215:2 429:5,18 432:11 433:22 synchronized 342:10,11 system 32:2,3 34:5 36:15,19,25 37:10 37:19 38:3,10,17 41:3,17,18 306:15 365:6,10,13 366:2 367:4 370:11 372:14,20 373:2,9 374:4 396:12,17 397:6 398:2 405:12 410:24 412:17 415:8 systems 38:8,13 342:7 350:11	352:15 t t 3:2,2 429:2 430:2 432:2,2 table 61:15 tail 207:23 215:9 take 4:11 11:10 14:9 29:14 34:10 37:17 48:25 58:21 60:3,16 75:7 86:14 92:3 102:7 127:7 138:6 145:2 146:17 160:19,21 167:5,20 172:2 176:7 202:22 210:6 216:22 220:17 237:8,19 274:19 287:16 288:16 289:15 313:7 329:4 350:25 351:8,8 371:18 372:8 379:16 411:9 taken 1:18 4:16 8:22 55:5,8 91:9 138:14 182:18 190:12 217:8 221:8 238:2 287:20 311:14 314:5 316:8 341:16 372:2 383:21 384:2 386:16 413:6 talk 63:5 86:23 100:4 123:22 140:22 158:18 179:3 202:19 214:25 241:15 335:4 389:18 413:12 420:9	talked 111:25 113:19 153:23 217:20 233:4 293:10 296:20 301:2 311:21 412:22 talking 49:13,24 65:7 75:23 86:16 95:24 106:19 111:2 117:3,8 120:9 125:22 138:20 140:19 141:6,24 142:5 144:22 147:24 148:19 152:25 171:19 172:4 174:2,13,22 182:12 186:14 187:4 189:12 198:25 213:17 222:7 223:5 229:13 266:6 277:20 278:14,16 278:19 280:22 294:10 325:9 326:12 332:8 333:22 339:20 341:19 347:4,17 348:14 364:13 369:11 370:13 377:16,22 378:9 379:12 384:9 391:17 398:14,15 406:22 420:16 talks 141:4,5 165:24 task 390:20 tasked 96:20 97:22 tax 87:24 88:2,8 89:4,4 90:4,4,5,5	90:16,16,17,17 91:4,5,12,13,14,14 91:20,20,24 94:21 95:25 96:16,18 97:21 team 40:10 68:20 286:11 289:25 295:18 301:9 302:15 304:25 305:6 307:19 309:24 tech 42:6 107:22 323:14,23 374:19 375:12 378:13 technical 7:13 217:4 403:11,20 404:10 technically 70:21 technology 37:6 38:5 270:11 340:22 345:10,22 346:3,6 348:17 tell 21:9 27:2 28:6 57:9 58:11 62:6 76:18 80:19 82:15 87:16 96:13 123:2 123:11 131:12 145:10 167:21 188:16 206:2 216:16 223:21 225:7 227:2 235:2 235:8 244:9 248:25 252:3,7 253:2 257:6 259:19 260:16 264:8 266:21 274:5 280:16 291:5 313:23 318:13 319:9 334:10 382:21 390:13 394:9,11
--	---	--	--

[tell - think]

Page 57

397:22 408:22 416:14 421:19 422:21 telling 99:22 140:13 163:18 186:25 217:22 219:17 234:15,19 245:5 254:25 257:16 278:22 279:2 281:11 300:19 319:23 351:16 tells 136:15 253:21 temporary 355:20 ten 207:6,12,23 208:2 211:9 225:7 307:13 327:6,8 332:4,7 371:19 398:16,20 term 37:22 93:4 101:19,22 169:21 183:19 376:8 terminate 160:17 182:24 terminated 120:20 269:18 terminates 180:22 terminating 183:5 213:11,22 214:16 215:6 termination 120:20 213:18 214:17,22 269:18 terms 20:15 42:8 60:15 83:21 119:23 131:21 142:5 158:5 169:17 173:15 202:3 210:10,18 211:11 228:9 286:24 414:10,22	test 7:11 56:12 testified 6:15 14:11 25:25 42:10 58:9,19 109:20 131:20 194:5 242:24 251:10 352:18 391:21 testify 58:13 59:19 59:20 60:6,18 409:16 429:5 testifying 142:25 143:3 185:8,9 269:10 297:20 303:2 382:17 testimony 11:24 25:24 28:10 40:6 58:11 84:7 123:6 126:6 132:23 135:2,6 139:24 142:13 148:13 163:24 164:23 165:6 169:7,11 173:7 177:17 178:10,11 189:24 201:23 211:17,21 215:3 223:7 224:6 224:15,16 225:15 234:13 245:13,15 245:17 251:20 254:6 269:20 273:3 281:25 303:13,21,22 306:14 308:23 309:21 310:2,3 350:20 357:20 387:22 418:20 428:7 429:6,10 432:13 text 43:16 197:14 197:17,18	thank 6:17 13:2 15:17 16:11 34:9 138:18 161:23 189:3 201:5 217:11 258:16 271:14 321:21 322:4 386:21 387:5 419:7 424:13 428:14 thanks 15:18 18:24 24:24 31:11 46:23 61:9 63:6 82:25 190:16 212:23 252:25 255:22 321:14 326:4,14 427:24 theirs 361:7 theoretically 208:12 234:6 293:8 theory 331:7 415:10,19 thereabouts 64:2 thing 56:2 57:16 72:11 97:4 98:7 109:13 120:5 189:23 350:5,6 377:23 things 63:12 123:16 129:8 157:21 159:14 192:18 193:4 236:6,15,17 238:19 241:12 247:11 248:21 249:10,12,17 273:18 290:18 293:20 309:14,18 309:21 341:25 345:10 355:22 384:13 387:17	392:3 401:2 think 5:21 7:12 9:4,5,11 15:4 16:9 17:19 23:5 24:6 25:12,25 27:3,8,10 29:15 33:8 40:21 43:2,12 47:23 50:20 62:15 70:4 71:7 74:23 75:25 93:13 98:5 109:13 112:9 116:19 120:13 122:16 128:24 130:4 134:6 137:24 156:7,23 159:13 165:18,21 166:2 180:6 182:10,13 186:11,12,13 187:21 193:12 194:4 197:22 203:8 209:15 217:22 223:6 225:17 226:10,17 226:22 227:16 229:23 232:15 233:4,6,14 239:25 248:20,20 249:9 249:12 253:22 260:11 262:5,22 263:2 265:2 267:2 270:3 284:17 285:17 286:18 287:2 290:13 295:14 297:4,23 298:14 299:13 303:2 312:11 327:5 336:11 337:3 341:24 343:22 349:18 359:7 360:9 364:8 364:9 387:15,22
--	---	--	--

[think - top]

Page 58

388:17 389:4,24 389:25,25 390:5,7 390:19 400:14 405:6,24 415:13 416:7 420:10,12 420:24,25 421:2,3 421:16,17 422:24 425:4,8,10 426:20 427:17 thinking 136:6 171:22 172:10 193:8,17 222:14 239:9,12 241:5 244:10 249:20 341:17 third 25:23 68:20 100:9,14 108:23 109:4 239:10 424:6 thirty 389:14 390:10,10 391:5 thought 22:5 110:25 126:3 164:17 166:9 255:13 256:14 286:10 378:22 389:13 three 7:24 18:22 48:19 180:22 181:12 275:20 throw 186:12 thrown 249:17 ticket 54:6 tierney 68:22 71:25 time 1:12 3:22 4:4 5:14 9:20,22 11:15 22:8 29:23 33:18 34:15 38:25 40:21,25 41:7,9 43:4 47:15,16	48:7 51:13 54:24 66:13,18 67:4,5,8 67:17 68:2 69:4,8 69:11 70:3,12 71:22 72:2,10 74:5,25 103:13 105:5 121:10,25 132:9,19 134:10 134:20 139:11 151:5,10 152:16 152:20,21,22,22 153:25 156:21,24 157:3,4,5,6,7,10 157:12,16,20 158:14,25 159:6,6 159:10,15,22 160:2,12,24 161:12 162:12 163:25 170:18 171:23 172:8 176:12 180:7 183:2 185:17,22 185:25 192:12,23 192:25 193:20 196:22,25 197:17 197:25 199:4,11 199:22 200:12 205:18 212:24 213:20 222:21 228:17,24 229:12 230:20 231:15 247:9 249:18,19 257:25 264:4 268:11 270:12,12 280:10,14 283:18 284:8 285:9,10 289:6 297:14 307:4 311:20 312:25 314:11 317:5 324:3,7 325:10,17 327:10	328:16 329:13,15 330:5 332:8 333:21 334:5 335:25 339:25 340:5,13 341:18 344:6,15 348:25 349:24 357:12,14 358:10 359:16,19 359:21 360:6 363:4 365:8 366:4 366:22 369:19 371:17 384:12 388:14,15,15 389:10,18 400:9 413:18,23 415:25 416:15 417:5,8 419:17 420:23,25 423:23 424:17,18 424:19 425:23 427:11,24 429:10 timeframe 201:11 284:16 334:24 340:7 343:12,22 369:19 417:7 times 7:22 16:22 32:19,22 41:25 72:15 83:23 122:11 160:18 165:13 236:20 289:13 307:24 345:24 349:2,4 365:15 369:4 403:20 timing 33:8,11 70:2 74:20 87:19 213:16 219:11 279:12 339:24 383:9 400:12,18 414:17 tired 420:3	title 57:22 76:3,6 81:8 305:25 309:15 titles 314:21 315:2 316:19 today 11:24 14:18 28:2 44:19 56:5 58:10 59:20 60:6 62:18 78:9,20 125:15 126:6 196:18 197:13,21 198:5,12,21 333:15 354:20 403:15 404:5 421:15 today's 20:5,7,10 27:21 30:2 48:6,8 428:7 told 20:12 81:11 84:15 85:13 106:23 123:7 125:8 163:24 164:4 186:13 187:6,7 216:19 219:2 224:11 234:24 244:7 245:6 246:9 249:3 252:5 260:12 266:18 271:16 273:6 279:6 280:19 281:7 349:13 356:15,22 380:10 384:17 399:6 411:19,25 412:3,4 tone 362:17,21 tonight 54:7 426:12 427:2 top 76:25 204:17 288:20 325:2,5,6 327:13,19 328:4
---	---	---	--

[top - typically]

Page 59

331:5 338:10 topic 58:21 59:23 62:22 85:3 132:3 148:15 219:16 269:4,8 352:12 399:12,13 topics 18:5 56:9 57:25 59:18 60:5 60:9,15,18,21 61:12,15,19 62:7 62:11,12,18,24 63:2,3,5,9,13,19 157:17 195:5 387:20,23 388:4 389:6,19 390:16 424:25 425:14,19 426:4,13,22 427:3 total 428:10 totally 186:24 410:7 touch 426:10,17 427:25 touched 283:21 tracking 397:20 tracks 37:2 traditional 32:11 traditionally 161:8 train 164:17 tranche 100:10,14 tranches 100:9 transaction 88:17 88:18 90:13 92:22 92:25 93:2 94:6 94:17 95:22 96:4 97:25 98:21,23,24 99:2,2,4,5,7 100:5 100:11,16,18,19 100:25 101:2 102:9 103:5,6,25 104:13,23,24,25	105:3,5 106:15 107:2,13,22 108:12,13 110:12 110:13,21 111:17 111:19 113:8,13 113:17,17,23 114:12 115:12 116:8,17 230:10 230:11 232:8,13 232:22 233:12 370:3 transactions 89:5 91:24 94:21 95:11 95:15,19 96:21,23 96:24 97:5,22 98:12,14,15 99:14 100:24 101:4,5,21 102:17 104:18 106:24 108:3,25 110:4 115:10,25 229:5,6,19,21 230:2,8 231:14,18 232:3,9,11 233:2,5 233:10,24,25 284:14 transcript 11:2 54:23 270:4 419:11 428:17 429:9,9 transcripts 54:15 54:19 transition 171:4 172:14,17,20 270:14 transitioning 172:23 173:4 transpired 51:4 273:10,12 travel 164:7 traveling 158:7 172:9	trea 2:12 treating 205:20 tremendous 87:13 407:15,19 408:13 408:23 409:7 trial 3:22 tribeca 148:8,14 149:8 163:7 176:24 177:3,13 177:16 178:3,9 tried 379:7 393:2 trigger 254:11 triggering 215:8 tripp 205:20,21 207:16,18 208:15 208:18 210:18 211:11,22 212:6 212:11 220:18 221:8,24 222:8,23 318:20,22 328:17 330:3 333:5,7,9 tripp's 206:10 210:9 220:25 221:5,10,15,18,22 222:12 trouble 12:18 true 8:14 413:15 429:9 432:12 truth 429:5 truthful 125:14 try 11:12 56:14 149:9 252:18 254:17 334:8 350:2 388:25 420:20 425:5 trying 25:22 30:4 84:20 91:10 93:13 99:19,20,25 116:10 135:5 150:15 156:8,18 164:16 170:7	186:20 190:4 242:13,21 243:2 245:16 257:10 340:6,7 341:24 348:7 381:8 384:15 390:20 410:22 413:23 422:3 ts 84:23 tuesday 171:10 tunnel 343:4 turn 134:21 389:6 turned 97:10 turning 59:2 137:11 twenty 328:8 two 13:17,19 16:22 40:22 66:4 66:22 68:14 72:22 76:15,17 78:21,25 79:3 80:7 81:18 102:13 123:16 175:21 180:21 182:14,16 192:18 193:22 195:5 223:3 288:23 329:13 331:12 332:3 362:23 392:3 402:14 425:6 type 87:10 88:16 90:21 323:10 345:12 typed 358:20 types 86:15 87:16 102:16 106:2 292:5 329:9 370:22 typical 243:2 typically 79:17 109:21 234:7,9
---	---	--	---

[typically - understanding]

Page 60

292:10,15 297:7 typing 10:24	101:22 108:2 109:9 111:21 112:20 117:25 118:5 129:2 137:8 145:2 147:12 149:2 153:21 157:13,22,22 159:13 161:18 168:24 175:20 185:12 195:20 197:18,18 198:23 200:13 201:9 203:11 205:19,20 205:21 209:12 213:15 214:7,23 228:13,14 252:16 266:16,18 268:11 278:6 279:12 286:11 288:22 289:11 307:6 317:20 318:10 322:18 326:2,3 327:15 328:24 330:4,23,24 331:11,11 333:24 335:11 336:4,23 337:13,13 339:9 340:14,25 341:22 346:19 347:16,16 348:16 349:5,23 350:2,12,25 351:8 352:11,11,13,14 354:24,24 355:3,9 361:2 362:16 366:15 367:12 368:3 371:12 378:7 383:11,12 383:13 384:7,7 385:25 392:4,20 396:16 397:10 401:8 402:20	405:15 409:6 410:18 413:3,18 413:19 414:16 415:17,23,25 416:21 417:23 423:5 unable 11:23 123:21 148:20 149:18 154:5 164:4 172:18 187:7,8 uncertain 156:20 162:19 164:5 uncertainty 67:17 164:25 unchanged 269:22 270:7 unclear 349:21 undergoing 157:13 163:2 understand 10:9 10:21 19:11 25:22 26:19 36:14 45:15 54:9 56:5 80:22 83:2,7,12 84:7,20 86:15 91:11 103:9 109:2 112:8 122:12 123:6 127:9 128:23 136:14 142:4,10 154:9 156:8 164:9 169:7 172:12 186:16,25 195:18 198:15 205:13 206:24 215:21 223:16 241:14 242:16 248:16,23 273:2 286:20 296:9 297:17 306:5 318:17 347:12 350:14,20	351:4,7 358:8 361:4,15 376:9 384:15 412:6 417:4,25 424:9 understanding 35:7 37:21,24 38:14 43:20 45:17 53:9,12,21 55:19 56:10 69:14 72:24 76:5 79:23 80:5 85:2,3,5,7 87:7,12 87:22 88:4,16 89:7,23 90:9 91:21 92:7,15,24 95:4,16,23 96:15 99:9 101:18 102:3 102:19 104:17 105:8,13 106:5 108:14 109:24 111:10,14,22 112:13,18,21,24 113:14 114:4,17 114:24 119:8,11 119:16 120:16 121:4,8 123:9,14 123:20 124:12,14 124:18,22 126:17 126:21 127:5,13 127:16,22 128:11 128:17 130:22 131:8,24 132:5,6 132:12 133:4,17 133:23 135:16 136:2,10 137:3,18 140:12 141:3,9 142:14,21 150:7,8 150:11,21,24 151:8,9,14,17,20 152:3,19 153:15 155:14 157:2,11 157:15 158:20
u u 3:2 ult 385:16 ultimate 68:12 382:14 383:2,18 384:3,21 385:2,7,8 385:16 ultimately 26:15 34:11 72:7 73:4 73:14,23 86:4 95:7,7,12 96:25 102:7 156:16 214:8 234:11 250:8,9 380:21 382:13 415:23,23 um 7:24 8:25 10:4 10:17 18:2,16 21:22,24 30:3,6 31:8,17 33:15,23 34:2,2,6,17 35:24 37:24 38:7,20,22 39:7,9 40:19 41:11,12,12,15 42:3,6 44:6,8 48:14 49:7,21 50:9,17 51:16,23 52:2 53:21 54:25 57:25 59:25,25 60:3 61:16,19,20 61:25 62:4 63:2,8 66:12,16 67:2,3,12 67:14,16,16,16,21 67:21 68:16,20 69:24 70:2,13,13 71:4,7,7,13,17,20 71:23 72:25 73:3 73:15,16,22 74:6 79:18 87:23 88:5 88:22 89:3 93:16			

159:3 160:5,13 170:10 172:17 173:25 175:2,11 184:2 200:11 205:6,11 207:14 220:4,14 224:5 229:8 251:10,12 257:7 269:25 302:25 320:21 322:25 323:22 328:15 332:13 335:19,23 336:19 337:19 341:20 344:4 345:16 347:2 348:15 350:22,24 351:2 351:15,17,22 352:9 354:18 357:8 359:3 360:12,17 363:20 372:19 373:8,19 374:7 375:7 376:4 378:18 384:24 392:5,8 396:15,22 396:24 402:6,14 402:22,23 403:4 407:22 408:7,19 408:20 410:25 411:4 413:9 414:11,19 417:20 417:21 423:7,22 understands 200:17 understood 10:13 25:24 27:19 32:6 40:6 49:25 53:22 103:19 128:4,6 140:15 142:6 149:14 152:24 158:20 159:19 162:11,15 183:17	184:6 205:19 212:13 223:7,21 227:8 268:15 379:14 undertake 200:5,6 200:19,20 202:4 undertaken 201:2 413:3 undertaking 399:4 undertook 200:21 391:23 underwood 2:19 49:21 underwriting 91:22,23,25 95:13 unfortunate 299:24 unfortunately 160:18 328:24 unintentionally 43:7,10 unit 4:14,15 75:14 75:20 138:12,17 189:2,9 271:7,13 321:20 322:3 386:13,20 united 1:2 4:19 units 428:10 unquote 310:6 unrelated 141:13 unsigned 3:14 update 146:3 237:13 387:13 406:9,10,15 updated 301:7 319:11 406:7 updates 345:20 346:9 upgrade 329:20 urgent 11:14	usage 345:13 usb 408:17 use 34:4 39:6,8 43:23 93:4,5 138:5 142:15 169:17 178:20 183:19 243:21 291:2 323:8,11,17 323:25 324:21 326:6 328:13 329:10 330:13,19 331:24 332:18 333:18 335:4,5,7 336:21 337:15 338:13,17,20,22 339:3,7,11,15 345:15 353:24 358:19 359:21 360:5 362:9 363:15 368:9,18 368:25 376:23 400:24 useful 302:6 username 323:3 323:11 340:20 341:6 usernames 341:12 users 373:12 uses 322:12 usual 363:7 util 339:9 utilize 31:18,19 153:11 322:9,19 339:9 343:2 utilized 46:12 90:12 296:24 323:4 324:8,10,17 325:16 332:22 365:17 368:2 utilizes 342:7 350:11	utilizing 335:24 336:2,12 369:18 v v 433:2 vacation 54:3 value 106:4 variety 87:15 various 67:3,4 72:10 86:24 92:16 166:5 205:22 286:22 289:13 293:20 307:4,5,18 342:7 365:7,8,9 368:3,4 416:23 423:11 vary 340:5 vehicles 81:7 85:17 venture 73:13 260:8 verbal 11:4,5 veritext 5:4 7:6 428:12 433:1 versa 121:14 version 61:11 65:11 versus 4:18 34:5 46:18 107:14 113:11 191:4 202:2 232:21,22 233:24 411:9 vice 121:14 video 4:10,15 49:5 49:8,20 327:13,15 videographer 2:15 4:2 5:2 6:8,16 12:17,22 75:11,17 138:10,15 188:23 189:6 190:9,13 217:5,9 271:5,10 321:17,24 371:23
---	---	---	--

372:3 386:10,17 387:3 391:12 428:6 videotaped 1:15 view 94:24 99:6,11 102:12 103:3 118:10,17,22 119:22 121:17,19 122:5,20 124:3,8 126:13,14,16 136:23 140:24 142:4 146:18 166:3 173:21 186:17 188:8,12 198:4 205:4 218:9 221:25 229:21 230:11 231:16 247:17 248:11 272:10 283:4 292:4,17 294:8 296:2 298:7,11,12 298:19,20,22 299:8 301:18 340:10 353:21 358:22 363:10 365:12,25 369:17 370:12 371:5,12 372:15 373:3 375:23 384:17 385:6,11,21 388:6 391:22 399:4 400:20 401:10,13 401:15 405:6 406:17 415:25 417:9,14 418:11 418:13 419:16 421:18,20 422:23 viewed 232:2 306:16 409:17 views 91:18 420:19	vigilant 15:21 vint 2:18 20:17 45:21 46:5,24 47:19,22 50:9,22 50:25 52:6 76:24 161:20 violated 58:25 59:14 violation 364:10 virtual 1:15 8:16 9:21,23 10:3 vis 220:24,24 223:8,8,22,22 360:10,10 376:21 376:21 voice 362:15,18 voluminous 390:19 voluntarily 69:13 69:15 132:8,18 134:10,19 183:20 vow 416:14	249:2 263:5,7 264:12 271:2,4 277:16,17 287:4 303:15 334:7 361:19 364:2,7 377:4 387:19 389:10 390:15 393:10 394:4 396:5 413:11 416:21 417:25 wanted 12:5 21:20 32:7 33:3 43:4 56:2 74:2 107:19 123:22 140:22 149:22 150:3,4,9 150:12 153:18 162:7 166:14 168:11 170:8,11 170:24 183:17 186:21 187:9 188:17 300:25 323:8 328:21 339:7 366:10 386:3 387:12,12 wanting 60:17 186:18,24 wants 240:10 war 425:19 warrant 425:20 waste 359:19 wasting 192:12 watch 336:20,25 337:4,23 338:3 watching 336:18 way 7:16 32:8 36:16 44:19 45:4 45:7 49:2 94:7 99:17,20,22 107:18 111:17,23 125:7 133:21 146:19 150:22,25	151:24 152:7,12 178:4 180:18 187:2 192:19 196:14,18 197:3 198:23 205:4,6 208:8 216:9 221:16 227:9 232:24 253:8 259:25 260:18 261:9,25 264:8,13 286:7 296:4 308:7 313:4 323:12,18 323:19 333:6 334:10 341:2 343:11 360:10 403:16 406:18 416:9 420:21 432:17 ways 182:16 we've 56:14 74:23 117:3,7 134:17 137:24 175:22 182:18 wearing 94:14 web 337:22 342:20 343:2 354:24 374:5 376:13 wednesday 171:11 week 33:25 53:13 53:13,15,24 55:5,9 169:10,14 171:8 171:12 172:3 184:24 week's 168:12 170:25 185:16 weekly 267:25 268:8,12 weeks 400:15 weiss 251:3,6,13 251:17 413:11,18 413:21,23 414:12
	w		
	wait 10:13 121:23 waited 70:15 waiting 386:25 waived 3:9 walk 87:2 want 22:6 36:13 40:18 57:18 60:13 75:4,7 84:6 95:11 98:8 99:12,15 101:7 106:7 107:8 112:7 123:5 126:25 133:22 138:2 142:3 160:14 164:10 169:6 178:9,23 183:19 187:5 189:22 218:25 223:18 248:17,23		

414:18 423:8,10 423:15,24 welcome 75:22 138:19 189:11 went 71:21,25 96:13 161:10 182:3 292:18,19 293:7 299:23 319:18 358:18 381:7 400:9 410:22 411:14,20 419:23 whatsoever 300:4 whereof 432:19 whispering 4:8 wide 87:15 wife 20:12 willing 239:21 wing 53:10 55:2 wish 161:21 withdraw 124:7 128:8,13 130:23 132:8,11,18,22 133:24 134:10,13 134:19 135:23 136:9,16 137:9,15 138:23 139:7,16 141:4 143:23 162:5 200:24 201:15 215:7 226:19 withdrawal 127:6 127:17,23 131:21 133:3,9,15 134:14 135:18 136:3,6,7 136:11,17,20 137:19 139:22 140:20 144:12 148:16 165:16 169:18 173:9,19 174:17 178:21	179:4,17 183:19 190:3,20 191:4,14 191:24 192:4,15 192:22 194:14,22 195:3,15 196:4,15 196:17 197:6,24 198:20 199:13 213:12 217:25 254:2 260:18 427:19 withdrawing 127:4 135:8 139:12 141:2,7,13 142:9,19 143:17 165:5,9 166:15 167:2 175:25 178:12 179:10,20 withdrawn 124:11 124:15 127:11 132:24 139:25 174:10 182:20 194:10 214:11 330:15 372:13 405:9 412:8 withdraws 128:19 180:20 255:3 withdrew 125:2 126:18,22 127:4 134:24 witness 1:17 3:10 3:16,18 5:23 6:11 6:13 12:18 14:4,6 14:25 15:5 16:4 16:24 56:6 57:11 58:5,23 59:12,22 60:7 61:13 62:2 77:22 102:25 117:7 131:15,22 138:9 145:9,14,21 146:11,21 147:17 147:19 155:3	167:12 168:2,21 169:24 170:9,21 171:20 172:15 173:12 175:17 176:17 200:17 203:5,19 219:2 237:15,25 238:21 239:4,16,23 243:6 243:16 245:13,23 247:22 249:7 256:25 257:8 260:7,19 261:5 274:21,23 275:15 275:23 276:9,15 278:7 283:2 284:5 284:21 287:18 288:3,10,15,21 289:2,22 290:6,17 291:11 292:6,25 294:5 304:16 306:17,25 308:25 310:12 313:9,25 314:9,22 315:20 316:6,13,21 318:9 318:21 320:3,18 362:12 364:17 374:21 386:24 388:6 391:2 392:15,19 393:17 397:13 405:17 410:8,15 414:2 416:6 420:2 424:24 425:2 427:14 428:20 432:10,13,19 witnesses 63:10 witnesses' 433:3 wondering 371:21 word 93:14 178:21 179:3 201:18 270:2 359:15	wording 248:21 words 17:17 179:7 194:15,18 214:12 242:14 243:4,5,10 243:12,21 244:2 255:7 257:5 352:10 work 34:3 68:9 72:4 74:2 84:3 85:15 123:21 140:5,22 141:11 148:20,22 149:25 154:5 156:15,22 160:2 161:7 162:16 164:5,6 165:19 166:2,6 167:4 172:20 186:15,20 187:8,9 233:21 284:11 290:24 294:21 298:2 322:8,10,12 322:23 325:16,21 326:11 334:21 335:9,12,20 338:4 338:14 341:11 342:14,16,17 343:5 352:20 378:6 420:20 worked 68:23 334:19 working 67:3,25 68:4 70:7 73:23 95:17 113:9 149:19 150:9 151:6 156:23 157:3,6,12,19 158:24 159:6,10 159:15 160:12,24 161:8,13 162:12 172:20 180:2,5,12 180:20 184:5
--	--	---	--

[working - à]

Page 64

294:12 307:19 325:8 335:13 workings 375:13 workplace 322:24 works 138:8 420:21 world 67:23 would've 202:12 writes 275:10 writing 136:16 257:6 276:24 277:8 278:3 written 132:10,20 137:8,14 139:6,18 139:21 195:12 197:5 199:3 wrong 96:14 242:3 315:15 319:24 362:5 363:11,22 364:9 388:24 wrote 239:8 243:7 243:10	166:18 167:16 179:14 186:11 190:17 202:19 205:2 233:6 236:22 241:14 252:23 262:13,25 298:3 303:17 305:18 309:13 340:2 348:21 349:5 353:2,3,7,25 361:12 362:19 364:17 366:25 367:8 382:3 387:9 387:14 388:19 394:4 411:6 416:6 420:14 427:6 year 8:20 34:2,24 39:21 40:22 66:20 70:15,16 71:4,6 125:22 126:4 162:17,20,22 207:23 211:9 years 33:20 40:2 47:7 51:14,16 71:8 180:9,13 207:3,6,6,10,11,12 208:2 219:12 226:14,24 227:18 235:9,20,23 236:9 236:25 257:4 263:17 326:22 328:7,8,10 357:13 yep 53:4 275:19 yesterday 7:12 323:9 yielded 201:25 york 1:2,22 2:6,6 4:21 5:5 6:14 9:12 432:4,5,8 433:1 youtube 337:9,11 337:22 338:3	z zero 164:10 394:22 zone 170:18 172:8 zoom 390:23 à à 220:24 360:10 376:21
x		
x 1:3,9 101:14 105:23 109:19 227:22 394:13,14 430:2 431:2		
y		
yahoo 32:12 354:9 405:12,13,22 406:5,19,23 yahoo.com 375:4 yang 2:17 6:2 7:8 13:20 18:21 49:21 yeah 25:21 44:24 46:21 52:21 54:8 60:8,13 69:22 91:10 129:18 130:10 141:22 156:19 165:14		

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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